

Zilla Court
Decissions
Case NO- 128(1848)

A handwritten signature in black ink, appearing to be 'Sms.' with a large, stylized initial 'S'.

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ERRATA in the *Decisions of the Moorsshedabad Civil Court for May 1848.*

Page 25 line 7, for Plaintiff read Plaintiffs.
 „ 10, „ his „ their.
 „ 18, „ Plaintiff „ Plaintiffs.
 „ and for was „ were.
 „ 19, „ Plaintiff „ Plaintiffs.
 „ and for brings „ bring.
 Page 28 line 1, for Plaintiff „ Plaintiffs.
 Page 27 and 29 Versus Mr. Mascarenhas, late of *Bansgarrah* Factory,
 read versus Mr. Mascarenhas, late of *Bahadoorpoor* Factory.



ZILLAH BEERBHOOM.

PRESENT: F. CARDEW, Esq., JUDGE.

THE 5TH JULY 1848.

Case No. 128 of 1848.

*Regular Appeal from a decision passed by the Moonsiff of Amduhra,
Gholam Buttool, 27th May 1847.*

Deegambur Rae Chowdhree, (Defendant,) Appellant,
versus

Rajkoomar Mookurjya, (Plaintiff,) Respondent.

THIS suit was instituted on the 19th March 1847, to recover the sum of Company's rupees 55-10, principal and interest, on a deed denominated *hawalat mutr*, alleged to have been executed by the defendant, Deegambur Rae Chowdhree, in favor of the plaintiff, Rajkoomar Mookurjya, in acknowledgment of a temporary loan of 50 rupees.

The deed was drawn up originally on plain paper, a stamp having been affixed to it subsequently.

The defendant, in answer, acknowledged the deed stating that Radhakishto Chowdhree, plaintiff's wife's brother, had instituted two suits in the moonsiff's court under Numbers 264 and 328 of 1845, against Bindrabun Rae Chowdhree, defendant's father, which were amicably settled on the date of the deed; and it having been agreed that the latter should pay the costs of suit less the amount of stamp duty, &c., which it was expected would be refunded on the filing of *razenamals*, the disputed deed was drawn up at Radhakishto Chowdhree's suggestion as between the present plaintiff and defendant, for 50 rupees, the amount claimed by Radhakishto as costs, on the understanding that an allowance should be made on account of the usual refund of stamp duty, &c.; that the witnesses to the deed and others who were present at the time would prove the above facts; and that his (defendant's) father was the real debtor, and was entitled to a refund on account of the two suits to the amount of rupees 24-4-8.

The moonsiff decreed the suit to plaintiff in full of his claim, on the evidence of three witnesses, Sheikh Aseer, Sheikh Puran, and Doolubh Mochce, whose names are subscribed to the deed, and

who deposed that the amount of 50 rupees was received by the defendant himself in cash: and in reference to a petition filed by the defendant on the date of decision, objecting that the above witnesses were not present at the execution of the deed and that their names had been added to it subsequently, he observed that it was the defendant's place to establish his own pleas, but that he had filed no evidence, that the names of the witnesses did not appear to him to have been added to the document, and as defendant acknowledged its execution no further enquiry was necessary.

As the defendant could not have anticipated that the plaintiff would tamper with the deed, which was filed only six days before the date of decision, I was of opinion that the ends of justice required that the defendant should have been called upon to substantiate his charge; and as there were other suits pending in this court connected with the same parties, instead of remanding the case to the moonsiff, I permitted the defendant to produce his witnesses before me. He has accordingly produced in this court four of the subscribing witnesses to the deed, Ambeeka Churn Mullik, Pureshmath Rae, Sectanath Udhikaree and Kenaram Rae, who gave evidence in support of the answer, saying that they were the persons who got the two suits referred to (which they described as false) amicably settled, and that the disputed deed was drawn up with the sole view of securing to Radhakishto Chowdhree the amount claimed by him as costs, after deducting the amount of refund of stamp duty. The plaintiff has also produced in this court a fourth witness, Ramo Rae, who spoke in favor of his principal.

Now there is not the smallest doubt on my mind that the names of the four witnesses examined on the plaintiff's part have been added to the deed since its execution; the position and appearance of the names alone prove this, they being entered in a cramped manner above and below the names of the five alleged original attesting witnesses, in a different hand and different colored ink. The evidence of the four witnesses examined on the part of the defendant, which was given in a satisfactory manner with every appearance of truth, is confirmed by the fact that the two suits alluded to, the records of which I have called for and consulted, were adjusted by *raceenamah* and *safcenamah* on the 2d Phalgun 1252, three days after the date of the deed. On the other hand the witnesses produced by the plaintiff can assign no reason for the loan of the money, and it is *prima facie* most improbable that so many as nine witnesses should have been required to attest a document of the description under litigation.

On the grounds that the deed has been tampered with, I reverse the moonsiff's decision and dismiss the claim, with costs in both courts chargeable to respondent.

THE 6TH JULY 1848.

Case No. 15 of 1848.

*Regular Appeal from a decision passed by the Moonsiff of Amduhra,
Gholam Buttool, 29th December 1847.*

Sreenath Chowdhree and Pyaree Dasya, (Plaintiffs,) Appellants,
versus

Sheikh Zukecooddeen, (Defendant,) and Sectanath Chowdhree,
(third party,) Respondents.

THIS suit was instituted by the plaintiffs, Sreenath Chowdhree and Pyaree Dasya, (appellants,) to recover from the defendant, Sheikh Zukecooddeen, the sum of rupees 15-7-6, arrears of rent, with interest, for 1252 B. S., on certain *nankar* lands, situated in mouzah Hashura, under a farming *kuboolecut* dated the 25th Kartik of that year. The defendant acknowledged the *kuboolecut*, and pleaded that he had not received possession of the disputed lands, the ryots having refused to pay the rent to him on the excuse that they paid it to Sectanath Chowdhree (who appeared as third party) and another; and the moonsiff having decreed the sum claimed without investigating the point as to possession, the case was remanded, on appeals preferred by the defendant and third party, on the 12th August 1847, for further enquiry. See Decisions of this court for 1847, page 134, where the particulars of the case are recorded in full.

The moonsiff now nonsuited the plaintiffs on the grounds that it was proved by a local enquiry, and evidence of witnesses examined on both sides, that the plaintiffs were not in possession of the lands at the time the farming arrangement was entered into; and no sufficient reasons having been shown, in my opinion, for interference with the decision, I confirm it and dismiss the appeal.

THE 7TH JULY 1848.

Case No. 221 of 1847.

*Regular Appeal from a decision passed by the Principal Sudder
Amcen of Beerbhoom, Mouljee Nujumul Huq, 31st August 1847.*

Bindrabun Râc Chowdhree, (Defendant,) Appellant,
versus

Madhub Chund Mookurjya, (Plaintiff,) Respondent.

THIS suit was instituted by plaintiff, Madhub Chund Mookurjya, on the 12th September 1846, to recover from the defendant,

Bindrabun Rac Chowdhree, (appellant,) the sum of Company's rupees 472-12-11, principal and interest, on a bond alleged to have been executed by the latter in favor of the former on the 25th Kartik 1248 B. S.

The defendant, in answer, denied the bond. He pleaded that plaintiff had no substance, but was living in a dependant state with his maternal uncle, Radhakishto Chowdhree, and he never had any transactions with him; that he himself on the other hand was in affluent circumstances and had no occasion to borrow money; that he had had a quarrel of several years' standing with Radhakishto Chowdhree and his relations regarding the *mokurruree ijara* of a share of mouzah Panchsonwa, which gave rise to much litigation in the civil courts, and his quarrel with Radhakishto Chowdhree having been recently rekindled, he suspected that the suit had been got up by the latter on a forged bond in a spirit of revenge.

The plaintiff, in his reply, stated that he lived independently of his maternal uncle, Radhakishto Chowdhree, and carried on trade separately on capital left him by his maternal grandfather, in consequence of his being the son of a koolin brahman and left according to custom dependant on his mother's family; that defendant had constantly borrowed money of his (plaintiff's) father, Rajkoomar Mookurjya, who had recently entered a suit in the moonsiff's court at Amduhra to recover a sum of 50 rupees borrowed of him in 1252 in the name of defendant's son, Deegambur Rac Chowdhree.

The principal sudder ameen gave judgment in favor of the plaintiff on the following grounds:—that the execution of the disputed bond and the loan of the money were proved by the evidence of five attesting witnesses, namely, Deemonath Pal, who was also the writer of the bond, Sheikh Azcemooddeen, Sheikh Sadhoo, Sheikh Amcerooddeen, and Sadhoo Churn Rac; that defendant had in refutation of the claim produced three bonds and some receipts with the view of showing that on the date of the disputed bond he transacted business in his own village, but those documents were all clearly forgeries, for the receipts were for bonds and property returned after being pawned, which it was unusual to grant, and several of the witnesses examined on his part were his dependants, and others lived at a distance; that on the other hand the signature to the disputed bond corresponded with defendant's admitted signatures appended to documents filed in other suits; that the plea that plaintiff's maternal uncle bore enmity towards defendant was not fit to be heard, for that was no proof of enmity on the plaintiff's part, and moreover the decision of the suit instituted in the Amduhra court, as alluded to in the reply, showed that defendant had had money transactions with plaintiff's father.

It is my opinion that this suit is false. The bare perusal of the evidence of the witnesses produced in support of the bond, independently of other considerations, is sufficient to lead one to that conclusion. The witnesses all repeated the same story, nearly *word for word*, beyond which they were unable to proceed; what one remembered they all remembered, what one forgot they all forgot, thus showing that they had been tutored; they had all repeatedly given evidence before, and all represented themselves as servants of plaintiff's maternal uncle, Radhakishto Chowdree, (with whom plaintiff lived in commensality,) with the exception to Deenonath Pal, who said he had been employed as *tchseeldar* in the service of plaintiff himself from the date of the bond up to the present time, but he could give no satisfactory explanation of the nature of his duties, and in his evidence given in a suit instituted by Ramchund Pal and others against Gopeenath Chowdhree, Radhakishto Chowdhree, Muthooranath Pal, Rajkoomar Mookurjya, and Purumsookh Rae, decided by this court on appeal on the 27th October 1846, he represented himself as being, in 1249, in the service of Purumsookh Rae, who was alleged to be Radhakishto Chowdhree's *benamee*; his testimony is therefore unworthy of confidence. The bond itself too exhibits marks of fabrication in that the signatures of the witnesses are written in four different shades of ink, which shows that they were not affixed to the document at the same time. The principal sudder ameen's criterion of the genuineness of the defendant's signature by a comparison with his admitted signatures appended to other documents, is at all times an unsafe one; for when a man commits a forgery he would endeavour to copy the original as closely as possible, and in my opinion the disputed signature is more labored than those produced as a test. His quotation of the decision passed by the Amdulra court, in proof of the defendant's having had money transactions with plaintiff's father, was premature, for that decision was at the time pending in appeal, and the result of the appeal, as given under the case No. 128 of 1847, decided by this court on the 5th instant, is a sufficient refutation of the plea.

For the above reasons I reverse the principal sudder ameen's decision, and decree the appeal to appellant, with costs in both courts.

THE 7TH JULY 1848.

Case No. 222 of 1847.

Regular Appeal from a decision passed by the Principal Sudder Ameen of Beerbhoom, Moulvee Nujumul Huq, 31st August 1847.

Bindrabun Rae Chowdhree, (Defendant,) Appellant,

versus

Rajkishto Chowdhree, (Plaintiff,) Respondent.

THIS suit was instituted by the plaintiff, Rajkishto Chowdhree, on the same date as the preceding case, to recover from the same party, Bindrabun Rae Chowdhree, the sum of Company's rupees 341, principal and interest, on a bond alleged to have been executed by the latter in favor of the former on the 9th Srabon 1252 B. S.

The defendant in answer denied the bond, and pleaded that it was a forgery got up through enmity in consequence of quarrels with plaintiff's relations, Radhakishto Chowdhree and others, and that it was improbable that he should have borrowed money of plaintiff, his father being alive.

The plaintiff, in his reply, denied the relevancy of the pleas advanced in the answer, stating that although he lived in commensality with his father he carried on a separate business.

The principal sudder ameen gave judgment for the plaintiff, on the grounds that the execution of the disputed bond was proved by the evidence of six subscribing witnesses, namely, Dooshahurun Sirkar, who was also the writer of the bond, Ramnurrayun Surnokar, Bholanath Sirkar, Chundermohun Rujuk, Kurum Mundul, and Puresh Mundul; and he added other reasons similar to those recorded under the preceding number.

The features of this case are much the same as the preceding one. The evidence of the witnesses, whose story presents a striking similarity to that told by the witnesses in the other case, bears the same appearances of their having been tutored. They had all of them given evidence before, four of them repeatedly, and were all of them servants and dependants of plaintiff's father, Ram Chund Chowdhree, a first cousin of Radhakishto Chowdhree's, living with him in the same place. The bond too bears the same marks of fabrication, the names of the witnesses being written in ink of various shades; and taking the two cases together a more barefaced attempt at fraud has never come before me.

I reverse the principal sudder ameen's decision, and decree the appeal to appellant with costs in both courts.

THE 13TH JULY 1848.

Case No. 70 of 1848.

Regular Appeal from a decision passed by the Principal Sudder Ameen of Beerbhoom, Moulvee Nijumul Haq, 29th February 1848.

Isreenund Dutt Jha, (Defendant,) Appellant,

versus

Seeb Dutt Jha, (Plaintiff,) Respondent.

THIS suit was instituted by plaintiff, Seeb Dutt Jha, on the 26th January 1847, to recover from the defendant, Isreenund Dutt Jha, (appellant,) the sum of Company's rupees 4,617, under the following circumstances.

Seeb Dutt Jha and Isreenund Dutt Jha had for a long time contended for the ojhaship of the temple of Boidyunath at Deoghur, each on the grounds of his being a descendant of a former ojha, or superintendent; and the dispute being likely to induce a breach of the peace was brought under Act IV. 1840. On appeal to the sessions court from the magistrate's decision, the case was made over to arbitrators, who passed an award, with the assent of both parties, to the effect that Isreenund Dutt Jha should have possession of the ojhaship, paying to Seeb Dutt Jha, as the price of his withdrawing his claim, the sum of 5,000 rupees in cash and a stipend of 2,000 rupees a year. The award of the arbitrators was affirmed by the sessions judge on the 21st February 1845, corresponding with the 11th Phalgon 1251 B. S., and in execution thereof Isreenund Dutt Jha was put in possession of the ojhaship, and Seeb Dutt Jha received from him the cash payment of 5,000 rupees; and the latter now instituted this suit to recover the annual stipend of 2,000 rupees for the years 1251 and 1252, with interest.

The defendant, Isreenund Dutt Jha, in answer, objected that the suit was undervalued, inasmuch as the value of the stipend ought to have been included in the stamp, and that Panchanund Dutt Jha and Darimba Dibya, the widow of Rajkishore Dutt Jha, deceased, towards whose maintenance also the stipend was awarded by the arbitrators, ought to have been made parties in the suit. He contended that the award of the arbitrators was not binding on him, inasmuch as it directed the stipend to be paid from the offerings of the temple, and the offerings of the temple were *dewuttur* property appropriated to the worship of the idol and no one could alienate them to other uses; that the claim for 1251 was altogether untenable, as the case was decided by the arbitrators at the latter end of that year: and he added that he had instituted a suit, No. 31 of 1847, to recover the sum of 5,000 rupees paid by him under the award.

The plaintiff in his reply affirmed that the suit was correctly valued; that as the case under Act IV. 1840 was decided between himself and defendant only, there was no necessity to make Panchanund Dutt Jha and Darimba Dibya parties—he was answerable to them for the money; and that defendant, if he disputed the award of the arbitrators, must relinquish the ohaship.

The principal sudder ameen decided that the suit being for the recovery of a sum of money was correctly valued; and that as the award of the arbitrators expressly stipulated that the stipend should be paid to the defendant himself, there was no necessity to include Panchanund and Darimba Dibya as parties in the suit. With reference to the plea that the award of the arbitrators was not binding, he observed that the defendant did not deny that the award was made with the assent of both parties, and, as he got possession of the ohaship under that award, it was not just that it should on the one side be confirmed and on the other set aside; that the decision of the Sudder Dewanny Adawlut passed on the 15th March 1829 in the case No. 259, which defendant filed as a precedent to show that dewutter property was not alienable, was not to the point, for in this case no attempt was made to alienate dewutter property; that the award of the arbitrators *per se* was perfectly just, it being in conformity with a suggestion made by the Government in a letter, No. 925, dated the 22d November 1822, addressed to the Board of Revenue on the occasion of the appointment of defendant's father, Surbanund Dutt Jha, to the ohaship of the temple, to the effect that plaintiff's father, Nityanund Dutt Jha (whose appointment to the office by the local agents on the death of his father, Anund Dutt Jha, had been superseded) should receive a suitable provision from the receipts of the temple. He therefore decreed the suit in favor of plaintiff by awarding to him against the defendant, Isreenund Dutt Jha, the sum of Company's rupees 2,333-5-4, being the amount of stipend from the date of the affirmation by the session judge of the arbitrators' award to the close of 1252, with interest thereon from the date of the institution of suit and costs in proportion.

I observe that the award of the arbitrators was drawn up according to a private adjustment of the dispute made by the parties between themselves; there was no mention made in it how the stipend should be paid, whether from the offerings of the temple or otherwise; the assent of defendant to the award was unequivocally expressed; he got possession of the ohaship under it, and I there consider it dishonorable in him to attempt to evade its conditions. The defendant, in my opinion, is clearly responsible to the plaintiff for the amount decreed by the principal sudder ameen; and no sufficient grounds having been shown for interference with the decision, I confirm it and dismiss the appeal.

THE 14TH JULY 1848.

Case No. 85 of 1848.

Regular Appeal from a decision of the Principal Sudder Ameen of Beerbhoom, Moulvee Nujumul Huq, 29th March 1848.

Hurmohun Acharj and others, (Plaintiffs,) Appellants,

versus

Dolgobind Samunt, Ram Sunkur Bhuttacharj, Ram Dyal Bhuttacharj, Bhuwanee Churn Gangolee, Gopal Das Byragee, and Messrs. Erskine and Company, (Defendants,) Respondents.

THIS suit was instituted by the plaintiffs, Hurmohun Acharj and others, on the 22d July 1847, to recover possession of one beegah of alleged rent-free *dewuttur* land situated in mouzah Jusra, pergunnah Azmut Shahee. Value of suit Company's rupees 27.

The plaintiffs stated that the disputed land, which they described as situated on the south side of a tank called Khan, was part and parcel of beegahs 21-12 of rent-free *dewuttur* land, the subject of dispute in a suit instituted by the former talookdar of mouzah Jusra, in 1222 B. S., for the recovery of rent, which suit was subsequently withdrawn in acknowledgment of the validity of the rent-free tenure; that they were forcibly dispossessed of the disputed land in 1252 by the defendant, Dolgobind Samunt, (in company with defendants, Ram Sunkur Bhuttacharj and others,) who claimed it as belonging to his jumma lands; that they complained to Messrs Erskine and Company, the present talookdars, who refused to give them redress: they therefore brought this suit to recover possession, praying that it might be tried under Regulation II. 1819, to which end they made the talookdars defendants.

On the plaint being filed, the principal sudder ameen referred the suit to the collector of East Burdwan, within whose fiscal jurisdiction the disputed land is situated, and in his court the pleadings were completed.

The defendant, Dolgobind Samunt, pleaded that the disputed land comprised the original site of the south embankment of Khan tank, which embankment was washed away in the great flood of 1223 B. S., and that it was included with his pottah lands.

The defendants, Erskine and Company, pleaded that the suit was collusive: the plaintiffs and the defendants, Dolgobind Samunt and others, were in possession of different portions of the embankments of Khan tank, for which they paid rent as ryots, and the sole object in instituting the suit was to get it declared that Khan tank was rent-free.

The plaintiffs in their reply denied the truth of the facts contained in the answers asserting that the disputed land was included with their rent-free lands, which were registered in 1209 under

tuidads Nos. 29027 and 29039, and that two beegahs of land comprising the eastern embankment of the tank were in their possession under the same tenure.

The collector, after receiving the plaintiffs' exhibits, returned the case with a report to the effect that certain lands were registered in his office as rent-free under the *tuidads* noted in the reply, but whether the disputed land belonged thereunto or not, it rested with the civil court to decide.

Subsequently the defendant, Dolgobind Samunt, filed a petition, confessing judgment to the extent of 16 cottahs of land, but the principal sudder ameen regarded it as collusive, and dismissed the suit, on the grounds that the plaintiff had only produced two witnesses in support of the claim, whose evidence was refuted by oral and documentary proof adduced on the part of the talookdars, which showed that the disputed land belonged to the defendant, Dolgobind Samunt's jote, and this evidence was confirmed by two pottahs filed by the said Dolgobind, one bearing date the 11th Srabon 1228 and the other the 15th Jeth 1251, the kubooleut, or counterpart, of the latter of which was filed by Erskine and Company.

I observe that this suit involves a simple boundary dispute cognizable by the moonsiff, and the reference to the collector was irregular, but being of opinion that no sufficient grounds have been shown to impugn the correctness or justness of the principal sudder ameen's decision, I confirm the same and dismiss the appeal.

THE 15TH JULY 1848.

Case No. 79 of 1848.

Regular Appeal from a decision passed by the Moonsiff of Sooree, Koolodanund Mookurjea, 11th March 1848.

Gunesh Mundul, (Defendant,) Appellant,

versus

Drubu Muyee Dasya, for self and as guardian of Mudhoosoodhun Gope, minor, Munee Dasya, and Mehur Khan, (Plaintiffs,) Respondents.

THIS suit was instituted by Kumul Munee Dasya, (who is since dead,) Drubu Muyee Dasya, for self and as guardian of her minor son Mudhoosoodhun Gope, and Mehur Khan, on the 24th August 1846, to recover possession of 14 beegahs of rent-paying land, situated in mouzah Anundpore; to set aside an order passed by the sessions judge under Act IV. 1840; and also to recover costs incurred in the criminal courts. Value of suit Company's rupees 141-8.

The disputed land was acquired by Jectoo Mundul, the father of Sadhoochurn Mundul, who died, leaving a widow, Kumul

Munee, and two daughters, Munee and Drubu Muyee, the latter of whom has a son named Mudhoosoodhun.

On the 23d May 1846, plaintiff Mehur Khan brought a complaint, under Section 6, Act IV. 1840, against defendant Gunesh Mundul, (appellant,) the brother of Kumul Munee, to recover possession of the disputed land on the allegation that he (complainant) had engaged it of Kumul Munee, in sub-tenure, in the month of Bysakh 1253 B. S., and that on the 10th Jeth, the following month, on his proceeding to plough the land, the defendant dispossessed him by force. Gunesh Mundul pleaded possession under a deed of sale executed by Kumul Munee in his favor, under date the 24th Poos 1252. Two petitions were put in on the part of Kumul Munee, as third party, one acknowledging the deed of sale, the other denying it; and the magistrate, considering the first petition authentic, decreed for the complainant. On appeal to the sessions court, the magistrate's decision was reversed, and the complaint dismissed, on the ground that no proof of possession on the part of the complainant had been adduced: hence the origin of the present suit.

The plaintiffs now alleged that the deed of sale was a forgery, and that Kumul Munee had no power under the Hindoo law to alienate the property to the prejudice of her daughter's son, and that Gunesh Mundul never had possession.

Gunesh Mundul pleaded that the deed of sale was duly executed by Kumul Munee, on the date set forth, for the spiritual benefit of her deceased husband—the sale was consequently valid; that his name was duly recorded in the zemindar's surishtah, on the 2d Phalgon 1252, and the naib, Gopee Kishto Mijoomdar, took from him an agreement and gave him a *rooka*, or note of hand, to that effect; that he reaped the crops and paid the rent due for the year 1252, and is still in possession; and that the claim on the part of Mehur Khan had been got up by Kumul Munee's daughters, Drubu Muyee and Munee.

In support of the deed of sale, eight witnesses were produced in the lower court, four of whom deposed that the sale was a *bonâ fide* one, and four that it was nominal, and that the defendant, in whose house Kumul Munee was living at the time, took back the price from her after the deed was executed; and the moonsiff, putting faith in the evidence of these four witnesses, decided the suit in favor of plaintiffs, by decreeing possession of the disputed land, reversal of the sessions judge's order, and costs incurred in the criminal courts to the extent of rupees 8-8.

Three out of the four witnesses on whose evidence the moonsiff has decided the suit, were examined on the part of the defendant, Gunesh Mundul, in the magistrate's court, where they deposed to the sale having been positive, without making mention of the return of the price; no confidence can therefore be placed in their

testimony. But as the defendant has failed to prove his plea that the property was sold by Kumul Muncie for her husband's spiritual welfare, the sale must be considered null and void under the Hindoo law, a widow having no power to alienate her late husband's property without the consent of her daughter's son, and such consent was wanting in this case. See case in point recorded at page 211, volume II., Macnaghten's Hindoo Law. I consequently affirm so much of the moonsiff's decision as awards possession of the disputed land to the plaintiffs; but I amend his order in respect to the costs in the criminal courts. The complainant, Mehur Khan, never had possession of the lands; his action therefore was untenable under the law; and on the other hand there is no doubt from the evidence that Gunesh Mundul had possession from the date of the deed of sale; the plaintiffs are therefore not entitled to the costs.

The moonsiff's decision will be amended accordingly, the costs of suit in both courts being charged to the parties in ratable proportions with reference to the result of this appeal.

THE 18TH JULY 1848.

Case No. 198 of 1846.

*Regular Appeal from a decision passed by the Acting Sudder
Ameen of Beerbhoom, 30th March 1843.*

Gour Mohun Mookurjya and Ram Tarun Mookurjya, (Defendants,) Appellants,

versus

Hurnath Rae, (Plaintiff,) Respondent.

THIS suit was instituted by respondent, Hurnath Rae, as the putneedar of talook Kashta Kendooa, on the 9th February 1842, to fix the rent of mouzah Surbediya, held by the appellant at an inadequate jumma of rupees 12. The suit was valued at rupees 796-12-10.

On the 30th March 1843, the acting sudder ameen tried the suit *ex parte*, decreeing to respondent, against the two appellants, rent at the rate of rupees 715-9-9 per annum, with costs.

After a lapse of nearly three years, the appellants, who are father and son, filed a petition in this court to the effect that the process of the lower court had never been served on them, and they never heard until recently, on their offering the rent for 1252 B. S., that a decree had been passed against them; that Gour Mohun Mookurjya, the father, was an inhabitant of Koochmolee, pergunnah Purooa, in zillah Hooghly, and came to Surbediya, only occasionally during the season of cultivation, and Ram Tarun, the son, was employed, at the time the suit was pending, as a police

mohurir at *thanah* Senpaharee and *pharee* Patrol, in zillah Beerbloom, places 16 and 20 cos distant from Surbediya; but the notice of the court was not even taken to the latter place, or they might have heard it; the return to the notice was altogether collusive; and that the ameen, deputed by the court to measure and assess the lands, never went to the spot. *

After a preliminary enquiry, which raised doubts as to the actual service of the notice, the petitioners were directed by me on the 1st August 1846, under Construction No. 1048, to prefer a regular appeal, which they have done, urging the same reasons as those advanced in their petition.

The respondent pleaded that the notice was duly served on the appellants at Surbediya, their usual place of residence; that (whatever defect there may have been in the service) they had full knowledge of the suit at the time it was pending, they also had knowledge that a decree had been passed against them; that the default was wilful, and therefore the appeal could not lie.

It appears from the record of the suit, that the notice of the lower court was twice issued, on the second occasion by the acting sudder ameen, on the suspicion, arising from the defendants' absence, that the first notice had not been duly served. On both occasions the notice was said to have been taken to Surbediya, and was returned each time, bearing the attestation of five witnesses to the acknowledgments indorsed on the documents. These witnesses (ten in number) deny all knowledge of the matter, with the exception to one of them, named Huree Ghose, who deposed that the notice was duly served on the second occasion on Gour Mohun, but not on the son, Ram Tarun. The witnesses are accused of having been suborned; but conclusive evidence that the notices were not served on Ram Tarun is afforded by a proceeding of the magistrate of this district, and the police day-books for the period in question, which show that on the dates of the alleged service, viz. the 8th Phalgun 1248, and the 16th Phalgun 1249, Ram Tarun was employed on his duties of mohurir at *thanah* Senpaharee and *pharee* Patrol; and the service having been proved to be false as regards one of the defendants, the presumption is that the notice was not duly served on either of them.

There remains for consideration the plea as to the appellants' knowledge of the suit. *

It is beyond dispute that Gour Mohun has resided with his family for several years past at Surbediya, of which place he appears to have usually styled himself an inhabitant in papers filed by him in court in other suits. That the ameen, deputed by the lower court, went to the spot, also appears, from the result of a local enquiry instituted by me through one of the ministerial officers of this court, to be beyond dispute; although there are sufficient reasons for impugning the correctness of his proceedings,

and his omission to issue a proclamation requiring the defendants' attendance at the enquiry, which is usually done on such occasions whether the proceedings of the court deputing the ameen be held *ex parte*, or otherwise, is shown by the record; and being a resident of Surbediya, the presumption is that Gour Mohun was aware of the ameen's deputation; besides which the respondent has produced in this court several witnesses of respectability, who depose to his (Gour Mohun's) knowledge of the suit both before and after the decree. I must confess I can find no grounds for doubting their testimony; and I can only account for his silence, after the decree was given, by the fact elicited from the evidence of the witness, Lala Roop Lal, the treasurer of the Beerbhoom collectorate, that in attempting to settle the matter amicably he was led into the belief that the decree would never be taken out against him.

It is contended that having knowledge of the suit the defendants should have preferred their appeal within the period prescribed by law; but admitting such knowledge on the part of Gour Mohun, I do not see how the want of it on the part of Ram Tarun is to be got over, for no proof of knowledge has been adduced in respect to him. The respondent's vakeel's argument that Ram Tarun was only a nominal defendant, his father being the party in actual possession, and that the relationship he bore his father inferred a knowledge on his part, will not hold, for it is not shown by the record that Ram Tarun was a nominal defendant, the decision of the lower court is as binding on him as on his father, and the inference as to his having knowledge of the suit cannot be admitted in the absence of direct proof.

But the knowledge thus imputed to the appellants is *fortuitous*, and the question arises whether a person having a fortuitous knowledge of an *ex parte* decree against him is bound, in the absence of *legal* knowledge, such as is wanting in this case, to appeal from the decision within the period prescribed by law, or whether he would not be justified to let the matter take its course, reserving his objections until execution of the decree be taken out. I certainly think he would be justified in so doing; and as the appellants in this case had, to the best of my belief, no legal knowledge of the suit against them, the ends of justice entitle them to a re-trial. I accordingly reverse the acting sudder ameen's decision; and as the sudder ameen's court has been abolished in this district, direct that the suit be placed on the file of the principal sudder ameen to be proceeded with *de novo*.

The delay in the disposal of this appeal is mainly owing to the parties having referred the matters in dispute to arbitrators, who, after having had repeated renewals of time, could come to no decision.

THE 19TH JULY 1848.

Case No. 116 of 1848.

Regular Appeal from a decision passed by the Principal Sudder Ameen of Beerbhoom, Moulvee Nujumul Huq, 25th April 1848.

Goshamee Das Byragee and Hurnath Rae, (Defendants,)

Appellants,

versus

Radha Mohun Lal Gosain, Munmohun Lal Gosain, Anund Lal Gosain, and Sookh Lal Gosain, (Plaintiffs,) Respondents.

THIS suit was instituted on the part of the plaintiffs, as the heirs of Motee Lal Gosain deceased, on the 27th February 1847, to recover possession of mouzah Radhabullubhpore, with *wasilat*, or mesne profits, from 1252 B. S., under the following circumstances as set forth in the plaint.

The deceased, Motee Lal, the father of plaintiff Radhamohun Lal, was an inhabitant of Bindrabun, in zillah Muttra, and lived in family partnership with his brother, Koonju Lal, father of plaintiff Munmohun Lal, and his first cousin, Dyal Lal, father of plaintiffs Anund Lal and Sookh Lal. The disputed mouzah Radhabullubhpore, situated in this district, was held in the name of Motee Lal as rent-free, and Motee Lal having occasion to return to his family residence at Bindrabun, it was left by him in charge of Jugumohun Singh on this condition that, after deducting the expenses of the hereditary *akhuras* at Tanteepara and Barooipore, he should remit the surplus profits to him at Bindrabun. Jugumohun Singh, and after his death, his son, Bisumbhur Singh, accordingly remitted to Bindrabun the surplus profits, which were received after the deaths of their respective progenitors by plaintiffs themselves. Subsequently the mouzah was resumed in favor of Government, and was measured and assessed in the presence of Bisumbhur Singh, who paid the expenses of the *ameen*; but on the settlement being about to be made, the defendant, Goshamee Das, calling himself the *chela*, or disciple, of a chela of Motee Lal's, filed a petition, praying to be allowed to take the settlement. Bisumbhur Singh filed a similar petition on the behalf of plaintiffs, which was supported by the collector in so far that he recommended the settlement to be made with him (Bisumbhur Singh) on a farming lease of 20 years; but the commissioner of revenue in his letter No. 190, dated the 18th July 1845, directed the settlement to be made with Goshamee Das, observing that "Bisumbhur

Singh had no claim whatever to the settlement, that Goshamee Das was the chela of Morsingh Das, and Morsingh Das the chela of Motee Lal, and as no accounts could be got of the latter, he must be conceived to be dead, and that therefore the settlement must be made in perpetuity with Goshamee Das; should however Motee Lal hereafter make his appearance, he was no doubt the proprietor, and if he could not obtain possession otherwise, might do so by a civil suit." The settlement was accordingly made with Goshamee Das; and the plaintiffs, therefore, on the grounds of the commissioner's letter, instituted this suit to recover possession of the mouzah, making Hurnath Rae, who had since the settlement purchased the mouzah of Goshamee Das in putnee, a defendant.

The defendants (appellants,) in answer, denied the claim *in toto* on the main grounds that the entire produce of the disputed mouzah went to the support of the *akhuras* at Tanteepara and Barooipore, of which Goshamee Das was the *mohunt* of the *guddee* in succession to Nursingh Das, who succeeded the founder, Motee Lal; and that no one save a *chela* was entitled to succeed to a *byragee's* estate. They at the same time impugned the correctness of the fact that the plaintiffs were the relations by blood of the deceased, Motee Lal, and the authority under which the action had been brought; alleging that the suit had been got up by Bisumbhur Singh, the plaintiffs being mere men of straw.

The principal sudder ameen decreed the suit in favor of the plaintiffs for the reasons given in his decision, without having disposed of the point, whether the plaintiffs were the heirs by blood of the deceased Motee Lal, which he took for granted, and without investigating the objections in respect to the authority on which the suit had been brought.

It appears that the suit was instituted under the authority of a *mookhtarnamah*, purporting to have been executed by the four plaintiffs in the name of Bisumbhur Singh. The document is written in Bengalee, and bears an attestation in the Persian character, signed by the judge of Allahabad, to the effect that the evidence of two subscribing witnesses proved it to have been executed at Raj-rewah by Gosain Sookh Lal, Nurain Lal, and Gosain Radha Mohun Lal. The names of plaintiffs, Munmohun Lal and Anund Lal are not mentioned in the attestation; and the signatures in *Nagree* of the parties executing the deed are written over erasures. Under such circumstances it was the more incumbent on the lower court to investigate fully the defendants' objections in this matter.

Considering the principal sudder ameen's decision incomplete, I reverse the same, and remand the case for further investigation with reference to the above remarks.

THE 20TH JULY 1848.

Case No. 264 of 1847.

*Regular Appeal from a decision passed by the Moonsiff of Kytha,
Wujeeooddeen Mahomed, 20th August 1847.*

Ram Lal Bundhopadhy and Seeba Das Mookhopadhy,
(Defendants,) Appellants,

versus.

Ramjeebun *alias* Jeebun Huldar Koiburt, (Plaintiff),
Respondent.

THIS suit was instituted by respondent on the 20th November 1846, corresponding with the 5th Agrahun 1253 B. S., to recover from appellants the sum of 14 rupees, being the value of a fishing net, with damages, with reference to the following circumstances.

The respondent held the right of fishery in the river Pagla from the zemindar of Hoodah Prusotimbatee, and was in the habit of taking his fish to sell to a *hât* belonging to Rancee Jymunee. On the 18th Bhadro 1253, the appellants and others, on the part of the zemindar of Pykur, seized hold of him whilst he was fishing, and told him to carry his fish for sale to their master's *hât*, and because he refused to do so, they beat him and took away his net. He therefore claimed the value of the net, and compensation in damages for the inconvenience the loss of the net, by which he gained his livelihood, had occasioned him, at the rate of two annas a day.

The appellants, in answer, denied the above facts, stating that respondent was summoned to the 4 annas zemindaree cutcherry at Pykur to adjust an arrear of rent, when he threw down his net in a pet and went off leaving it behind him; that he subsequently settled for the rent and took back his net, granting a receipt for the same, and that he had now been instigated to prefer this suit by Rancee Jymunee's people.

The moonsiff, considering the facts of the case as stated by respondent established in evidence, decreed to him the value of the net, 3 rupees, and damages at the rate of 1 anna 6 pie per diem to the date of institution of the suit, and further daily damages at the same rate during the time the suit was pending, making a total of rupees 35-10, besides costs.

I concur in the moonsiff's finding on the facts of the case, but as a net is an article capable of being replaced, the principle on which he has assessed the damages is wrong in my opinion. The

question is what is a fair amount of damages for the inconvenience occasioned to respondent by the loss of the net? Taking as a guide the regulations relative to abuses on the part of a zemindar towards his ryot, I consider restitution of the value of the net and twice as much again as damages to be equitable; and I therefore, in amendment of the moonsiff's decision, decree to respondent against appellants the sum of 9 rupees, and costs of suit in the lower court. The costs of suit in this court will be charged to each party respectively.

THE 22D JULY 1848.

Case No. 41 of 1848.

*Regular Appeal from a decision passed by the Moonsiff of Gopalpore,
Gopeenath Das, 27th January 1848.*

Chinibas So, (Defendant,) Appellant, ●

versus

Manik Chunder So, (Plaintiff,) Respondent.

THIS suit was instituted by respondent on the 9th April 1847, to recover from appellant the sum of Company's rupees 29-13-9, being the value, with interest, of 18 *maps*, 6 *sulees* of *mowah* blossoms, alleged to have been delivered to the latter by the former on the 15th Bhadro 1252 B. S., at the rate of 6 sulces the rupee.

Appellant, in answer, denied the claim, and pleaded that it had been brought forward through enmity in consequence of a quarrel they had regarding a spirit shop.

The moonsiff decreed the suit to respondent in full of his claim, on the grounds that the delivery of the *mowah* blossoms was proved by the parol evidence adduced on his part, which the witnesses examined in support of the answer failed to refute, their evidence being merely hearsay.

I concur with the moonsiff in considering the delivery of the *mowah* blossoms proved; but as it has not been shown that interest was claimable under any of the circumstances provided for in Act XXXII of 1839, I amend his decision by awarding to respondent the principal of the debt with interest from the date of service of the notice of the lower court on appellant. The costs of suit will be borne by the parties in ratable proportion, with reference to the result of this appeal.

THE 24TH JULY 1848.

Case No. 21 of 1848.

Regular Appeal from a decision passed by the Principal Sudder Ameen of Beerbhoom, Moulvee Nujumul Huq, 29th December 1847.

Sreedhur Das, (Defendant,) Appellant,

versus

Ramkishto Das and Dhunkishto Das, (Plaintiffs,) Respondents.

IN this case the respondents sued to recover possession of two annas' share of lot Lukhindurpore and lot Muhal Jungle, also the sum of 443 rupees, being two annas' share of the surplus proceeds of lot Gobindpore, on the allegation that their father, Sreedhur Das, appellant, made over the said shares to them at the time of their separation, the 3d Bysakh 1243, conditionally to their paying a proportionate share of the debts incurred by him up to that date. Appellant pleaded that the arrangement referred to was not binding on him, as respondents had failed to observe the condition to pay his debts.

On the 28th May, 1847, the principal sudder ameen decreed the suit to respondents in full of their claim, which decision was reversed on appeal, on the 12th July 1847, and the case remanded to the lower court for further investigation. See Decisions of this court for the year 1847, page 109, where the particulars of the case are recorded in full.

The principal sudder ameen now decreed to respondents a one anna share only of lot Lukhindurpore and Muhal Jungle, finding that a four annas' share, or one half of appellant's original patrimony in those estates, had been sold to the defendant, Kalee Purshad Mookurjya, with respondents' concurrence, towards the payment of joint debts; and he affirmed his former award in respect to the surplus proceeds of lot Gobindpore by decreeing the sum of 443 rupees as sued for.

Against this decision the appellant objects, *first*, that the arrangement entered into with his sons was not binding on him, because his wife is still capable of bearing children; and, *secondly*, that a large portion of the surplus proceeds of lot Gobindpore had been absorbed in payment of joint debts under decrees of court.

The first objection was not advanced in the lower court and therefore cannot be heard in appeal; the second objection is connected with the condition under which the separation was made, and should have been met by the principal sudder ameen by declaring his award subject to that condition, instead of decreeing absolutely as he has done.

The decision, which appears to be correct in other respects, will accordingly be amended to the extent above indicated, the costs in this court being charged to each party respectively.

THE 26TH JULY 1848.

Case No. 12 of 1848.

*Regular Appeal from a decision passed by the Moonsiff of
Gopalpore, Gopeenath Das, 30th November 1847.*

Doolubh Mundul, Sonatun Mundul, and Haradhun Mundul,
(Defendants,) Appellants,

versus

Bindrabun Mundul, Gour Mundul, and Muthoor Mundul,
(Plaintiffs,) Respondents.

THIS suit was instituted by the plaintiffs on the 15th February 1847, to recover the sum of Company's rupees 82-14, on account of a decree of court.

The decree in question was given jointly against plaintiffs, and the defendants, Doolub Mundul, Sonatun Mundul, Haradhun Mundul, and Bulram Mundul, for a balance of rent, without specification of particular sums, or proportions payable by each. In execution of the decree the sum of rupees 15-14 was realized by the decreeholder from the surplus proceeds of joint property, and the balance, rupees 82-12-6, including interest, plaintiffs paid on the 10th Bysakh 1251 B. S; and as plaintiffs held only a four annas' share in the jumma on account of which the arrears of rent were decreed, they instituted this suit against the co-debtors to recover a 12 annas' share of the latter sum, with interest from the date of payment.

The amount of plaintiffs' share in the jumma and the payment by them of the balance due on the decree were not disputed by the defendants. Doolubh Mundul and Sonatun Mundul (appellants) pleaded that they had paid plaintiffs the amount of their 4 annas' share under a receipt; Haradhun Mundul (appellant) entered a similar plea; and Bulram Mundul, four annas' shareholder, confessed judgment.

The appellants having failed for the period of three months and fourteen days to attend to the court's requisition, calling upon them for proofs in support of their pleas, the moonsiff declined to receive the proofs offered on the part of Doolubh Mundul on the day preceding the date of decision, and decreed the suit to plaintiffs against the defendants jointly; and being of opinion that no sufficient grounds have been shown to impugn the correctness or justness of the decision, I confirm the same, and dismiss the appeal.

THE 26TH JULY 1848.

Case No. 40 of 1848.

Regular Appeal from a decision passed by the Principal Sudder Ameen of Beerbhoom, Moulvee Nujumul Huq, 29th January 1848.

Khetronath Ghoonya *alias* Kartik Ghoonya, (Plaintiff,) Appellant,

versus

Ram Das Mookhopadhya, (Defendant,) Respondent.

THIS suit was instituted *in forma pauperis* by appellant, on the 12th March 1847, to recover from respondent possession of 12 beegahs of rent-free land, situated in mouzah Burkutteepore *oorf* Bujurpore, and arrears of rent, with interest, from 1242 to 1252 B. S., at the rate of 10 Sicca rupees per annum. The suit was laid at Company's rupees 386-2-2.

The appellant stated that the land in question was his hereditary rent-free property, and was leased by his father, Purshad Ghoonya, to Dwarkanath Mookhopadhya, the father of respondent Ram Das Mookhopadhya, at an annual rent of 10 rupees, under a kubooli written on plain paper, bearing date the 2d Phalgun 1222 B. S.; that his father received the rent up to the year 1241, and died in the month of Srabon 1242, leaving him as his heir; and that since that period he had repeatedly demanded rent of respondent, who put off payment with promises.

The respondent, in answer, denied the claim, pleading that appellant's father sold the land to his (respondent's) elder brother Dhurm Das, under a *kubala*, or deed of sale, dated 21st Phalgun 1224; that he succeeded his brother at his death, and as 32 years had elapsed from the date of the deed of sale to the date of institution of the suit, the claim was opposed to Section 14, Regulation III. 1793, and Regulation II. 1805; that the allegation that appellant's father received the rent up to the year 1241 was false, appellant's father having died in the year 1239.

Appellant, in his reply, joined issue, denying the facts stated in the answer.

The principal sudder ameen was of opinion that the suit was barred by the statute of limitations, and therefore dismissed it. He recorded that, although the very suspicious appearance of the deed of sale produced by respondent precluded all confidence in the plea that the land was acquired by purchase, yet until appellant could satisfactorily prove that he had received rent within the period of 12 years antecedent to the date of institution of suit, the claim must be held to be barred by lapse of time; that the evidence of appellant's witnesses was not satisfactory, inasmuch as they nullified his statement by deposing that he received rent from

respondent two or three years after the death of his father in 1242; and it was shown by the evidence of two witnesses examined on respondent's part that appellant's father died 15 or 16 years ago.

The principal sudder ameen having omitted to take evidence as to the demand and promise to pay, pleaded in the plaint, appellant had permission to produce witnesses on that point in this court. He has accordingly brought forward four witnesses, including two who were examined before the principal sudder ameen, but their evidence fails to establish the point, and is so contradictory and unsatisfactory as to destroy all confidence in the claim. And at the same time I must observe, in justice to respondent, that the appearance of the deed of sale does not seem to me to bear out the opinion expressed of it by the principal sudder ameen; and that there are strong grounds for belief, arising from the evidence of appellant's witnesses, that the suit has been got up by a third party from motives of ill-will.

I therefore confirm the decision of the lower court, and dismiss the appeal with costs.

THE 27TH JULY 1848.

Case No. 51 of 1848.

Regular Appeal from a decision passed by the Moonsiff of Sooree, Koolodanund Mookurjea, 21st February 1848.

Jugubundhoo Rae, (Defendant,) Appellant,

versus

Sheikh Kadir Buksh, Sheikh Nadir Buksh, Sheikh Madhoo, Sheikh Hadoo, and Beebee Lal, (Plaintiffs,) Respondents.

THIS suit was instituted by the plaintiffs, Sheikh Kadir Buksh and others, on the 11th August 1846, to obtain the reversal of sale, and recover possession of two jack trees, value 16 rupees.

The sale of the two trees claimed by the plaintiffs was held on the 25th May 1846, by the defendant, Jugubundhoo Rae, (appellant,) abkaree darogah acting under the orders of the superintendent of abkaree of zillah Beerbhoom, to recover an arrear of abkaree revenue due from the defendant, Gooroo Churn So.

The moonsiff decreed for the plaintiffs, charging appellant and the superintendent of abkaree with costs.

The appellant claims exemption from costs on the plea that he was bound to carry out the orders of his superior; but as he did not appear in the lower court, and has assigned no reasons for the default, I do not see any grounds with reference to the Circular Order of the Sudder Dewanny Adawlut, dated the 12th March 1841, to interfere with the moonsiff's decision on this appeal, which I accordingly dismiss.

THE 27TH JULY 1848.

Case No. 68 of 1848.

*Regular Appeal from a decision passed by the Moonsiff of Sooree,
Koolodanund Mookurjea, 21st February 1848.*

Superintendent of Abkaree of Zillah Beerbhoom, (Defendant,) Appellant,

versus

Sheikh Kadir Buksh, Sheikh Nadir Buksh, Sheikh Madhoo, Sheikh Hadoo, and Bibi Lal, (Plaintiffs,) Respondents.

THIS suit was instituted by the plaintiffs, Sheikh Kadir Buksh and others, on the 11th August 1846, to obtain the reversal of sale and recover possession of two jack trees, value 16 rupees.

The sale of the two trees claimed by the plaintiffs was held on the 25th May 1846 by the defendant, Jugubundhoo Rae, abkaree darogah, acting under the orders of the superintendent of abkaree, (appellant,) to recover an arrear of abkaree revenue due from the defendant, Gooroo Churn So, and the trees were purchased by the defendant, Rujub Alea Khan, for the sum of 5 rupees. No objections were offered to the sale on the issue of the usual notices, and the correctness of the superintendent's proceedings was in no wise impugned. The only reason given by the plaintiffs, who are inhabitants of the same village as that in which the trees are situated, for not having advanced any claim previously to the sale, being, that plaintiff Kadir Buksh, who was the manager of their household affairs, was absent from home at the time.

The superintendent, in answer, objected to the suit on the above grounds, without disputing in direct terms the plaintiffs' right to the trees; but he subsequently took up the cudgels on the part of the defaulter, Gooroo Churn So, (who in his answer had affirmed his own right to the trees,) and brought forward witnesses to prove that the trees belonged to him, and were in his possession at the time of sale.

The moonsiff rejected the testimony of these witnesses for the reasons given in his decision, and, considering the plaintiffs' right to the trees established by the evidence adduced on their part, he passed a decree awarding to the plaintiffs possession of the trees, charging the superintendent and the abkaree darogah (the latter of whom did not appear in the lower court) with the costs, and directing the superintendent to refund to the purchaser, Rujub Alea Khan, the amount of the purchase money with interest from the date of decision.

The superintendent, in his reasons of appeal, objects to being charged with costs and with interest on the purchase money ordered to be refunded. But I do not see any grounds for interference with the moonsiff's decision. As the superintendent con-

tested the plaintiffs' right to the disputed trees, and the plaintiffs gained their cause, he is liable to costs agreeably to the practice of the courts; and the award of interest on the purchase money from the date of decision appears to me perfectly equitable. I therefore confirm the decision and dismiss the appeal.

THE 28TH JULY 1848.

Case No. 277 of 1847.

Regular Appeal from a decision passed by the Moonsiff of Sarhut, Suneenooddeen Ahmud, 26th November 1847.

Motee Mahato and Phattoo Mahato, (Defendants,) Appellants,
versus

Nundlal Mahato, (Plaintiff,) Respondent.

THIS suit was instituted by respondent, on the 19th April 1847, to recover from appellants the sum of Company's rupees 63-1-10, the balance, with interest, due on a *khata-buhee*, or ledger.

The appellants, who are father and son, denied the debt *in toto*.

The moonsiff gave a decree to respondent in full of his claim, against both of the appellants, on the ground that the claim was established by the evidence adduced.

The claim is founded on a leaf of a *khata-buhee* (to which a 4 annas' stamp has been affixed) bearing an entry to the effect that "on the 29th Assar 1249, Motee Mahato's account was adjusted in the presence of himself and his son, Phattoo Mahato, and exhibited a balance of 48 rupees, besides 4 maunds and 2½ palies of paddy." This is followed by the names of four witnesses, namely, Gangoo Mahato, Subooree Rama, Laloo Mahato, and Rabee Mahato.

Then are added other entries, namely, 6 rupees as interest, making the total 54 rupees, and two payments to the amount of rupees 13-14, under dates the 20th and 27th Assar 1250, followed by the names of two witnesses, Gangoo Mahato and Muddun Pare, and the amount claimed is made up of the balance of the principal, interest thereon, and the value of 5 mannds 2½ palies of paddy, with three quarters as much again, by way of profit.

The account is not signed either by the father or the son, nor does it state that either of them acknowledged its correctness. The claim therefore rests entirely on the evidence of the witnesses, which is unworthy of confidence on account of contradictions; for instance, the witnesses who are said to have been present when the adjustment noted in the first entry was made, namely, Seeb-lol Das, the writer of the account, Gangoo Mahato, Subooree Rama, and Laloo Mahato, all mention different localities as the place of adjustment. Gangoo Mahato knew nothing of the alleg-

ed payments, although his name is entered at the bottom of the account as an attesting witness, (the other witness, Muddun Pare, was not produced,) and not one of the witnesses, not even the writer of the account, was able to state on what the adjustment was based. "The defendants acknowledged the balance; it was entered in the *khata-buhee*, and both father and son (so say the three attesting witnesses) touched the pen and got the writer to sign their names for them!" This is the pith of their story, which I consider not entitled to credit.

In the above opinion I am borne out by that of a *punchaet*, the majority being composed of respectable inhabitants of the district of Sarhut, to whom I referred the suit under Clause 2, Section 3, Regulation VI. of 1832, in consequence of respondent's asserting that the localities mentioned by the witnesses, although differing in name, were one and the same; but this does not appear to be the case. One of the witnesses said that the entry in the *khata-buhee* was made at plaintiff's *durwazah*—which term is explained by the *punchaet* as applied in that part of the country to the place at the outer door-way used for sitting in; another that it was done in plaintiff's "*gooreeghur* (corresponding with bungalow) within the homestead"—this the *punchaet* maintained could not be called *durwazah*; and another that it took place in plaintiff's *khumar-batee*, or threshing floor, a place perfectly distinct from the other two. However, setting aside this discrepancy, there are sufficient grounds for doubting the truth of the claim, and I therefore reverse the moonsiff's decision, and decree the appeal to appellants, with costs in both courts.

ZILLAH BEHAR.

PRESENT: THE HONORABLE ROBERT FORBES, JUDGE.

THE 28TH JULY 1848.

No. 5 of 1848.

Regular Appeal from a decision of Moulvee Mahomed Ibrahim Khan Bahadoor, Officiating Principal Sudder Ameen of Behar, dated 26th January 1848.

Jeewun Loll, (one of the Defendants,) Appellant,

versus

Shaikh Liyakut Allee, (Plaintiff,) Respondent.

THIS was an action brought by the respondent as plaintiff, on the 16th May 1846, to recover the sum of Company's rupees 1,706-2-3, principal and interest, out of the sum of 2,000 rupees as per a muhajunee chittah, written by the appealing defendant, Jeewun Loll, and one Jahoo Loll, who did not appear or answer.

The plaintiff states that Jahoo Loll and himself were both of them mooktyars of Musst. Wullecoonnissa; and that they had received from the collector's treasury, on account of their client, Company's rupees 2,840, due to her as surplus sale proceeds of mouzah Russheedpore Chandpoora. As, however, neither the Mussumat, nor any one in her behalf, came to receive the money, they, the two mooktyars, paid 1,000 rupees into the cootee in Saheb-gunge, of the defendant Jeewun Loll, on the 6th August 1844, or 8th Sawun 1251 F., Sumbut 1901, and on the 7th of August, or day following, or 9th Sawun, another 1,000 rupees, in acknowledgment of which deposit of 2,000 rupees, the defendant gave them a chittah, or memorandum. Afterwards the defendant Jeewun Loll, with a view to evade payment of this sum and other monies, belonging to different muhajuns and landholders, absconded; and Jahoo Loll, the other defendant, also went home. Eventually the plaintiff found Jeewun Loll at Hajeepeer, and having, with great difficulty, induced him to return, and urged him to pay the money, Jeewun Loll kept making excuses, and begging plaintiff to take from him either a bond, or kistbundee, as he had no ready money. The other mooktyar too, Jahoo Loll, took no steps to get the money,

and ultimately Musst. Wullecoonnissa required the plaintiff to make good the amount. He, accordingly, compromised the matter with her, by engaging to pay rupees 1,400, and giving her 200 rupees ready cash, executed a kistbundee, binding himself to pay 1,200 rupees in six years, by annual instalments of 200 rupees. The plaintiff therefore sues to recover the above sum of 1,400 rupees, as principal, and rupees 306-2-3, interest, or total Company's rupees 1,706-2-3.

The appellant, as defendant, denying the justice of the plaintiff's claim, denies also being himself a regular muhajun, or having a cootee, and stating that he merely keeps a cloth shop with very small money transactions as an inferior muhajun, pleads that this case had been got up by Mukhun Loll and Greedhur Sahoo, muhajuns, and Shaikh Oolfut Hossein, a vakcel of the sudder ameen's court; that he does not know the other defendant, Jahoo Loll; and that he himself did not abscond, but had proceeded to Calcutta to prefer an appeal before the Sudder Court, from a decision of the additional judge; that the plaintiff, in one part of his plaint, states that in the chittah both his (defendant's) name and that of Jahoo Loll had been inserted, but in another place only the name of the latter. He urges that had the money been *bond fide* deposited, they (the defendants) would have taken a bond from him, or at least a chittah on stamped paper. Moreover, the plaintiff states that he deposited 2,000 rupees as per chittah for that amount, whereas he only sues for 1,400 rupees.

On the 26th January 1848, the suit was decided by the officiating principal sudder ameen, Mahomed Ibrahim Khan Bahadoor, who decreed in favor of the plaintiff for the whole amount of his claim,—two respectable muhajuns, Mukhun Loll and Greedhur Sahoo, having attested the chittah, and deposed to their being acquainted with the hand writing and signature of the defendants, and two persons, Gridharee and Uttim, having proved the delivery of the money.

The grounds of appeal are, that the plaintiff has stated that no one, on the part of the Mussumat, came to receive the money from the collectorate, whereas the witness Greedhur says that he came for that very purpose; that the testimony of the other witnesses is contradictory; that in the chittah is written "leka (or ledger) of Lala Jahoo Loll, Sumbut 1901, and of Liyakut Allee"—now it is not customary to insert any name after the year; besides which it is very strange that though the plaintiff has resided a long time in Sahebgunge, and never before deposited a single rupee with him, he should all at once deposit so large a sum as 2,000 rupees.

To this it is urged, in reply, by the respondent, that he has had dealings with the appellant for a very long time; and that the witnesses, Mukhun Loll and Greedhur Sahoo, being respectable men, would not perjure themselves to benefit him.

JUDGMENT.

In addition to the proof adduced in the court of first instance in substantiation of the plaintiff's claim, and on which the suit was there decreed in his favor, an inspection in this court of the account books of the defendant, Jeewun Loll, satisfactorily establishes the fact that the plaintiff, Liyakut Allee, has been in the habit of transacting business with the former for several years past. I uphold the decision of the officiating principal sudder ameen, and dismiss the appeal, with costs payable by the appellant.

THE 31ST JULY 1848.

No. 56 of 1847.

Appeal from a decision of Syud Tufuzzul Hossein, Sudder Ameen of Behar, dated 29th September 1847.

Mya Singh (kutkinadar) and Sunker Mowar (his security,
(Defendants,) Appellants,

versus

Parbuttee Churn Chukerbuttee, mooktyar and man of business of
Mottee Soondree Dasse, (Plaintiff,) Respondent.

IN this suit, instituted on the 7th June 1845, the plaintiff sought to recover Company's rupees 305-11-7, arrears of rent and costs of suit, by reversal of a summary award of the revenue authorities under the following circumstances. A thika lease had been given by Motee Soondree Dasse of the 8½ anna share of certain villages in pergunnah Surres Kootoomba to Mahomed Hossein, for a period of seven years, from 1249 F. S., or 1841-42 E. S., to 1255 F. S., or 1848-49 E. S., the lease being dated 9th February 1841, on a yearly jumma of 55,001 rupees; and in 1249 F. S., the thikadar, or lessee, gave a kutkina of the 8½ anna share of mouzahs Gurdee Muhwar and Sindwarah for the same number of years, on yearly jummas of different amounts, to the defendant, Mya Singh—his co-defendant, Sunker Mowar, being security. On the 1st Assin, or beginning of 1250 F. S., the thikadar, not being able to carry on the farm, resigned his lease by returning the pottah to Motee Soondree Dasse, having written on the back of the lease to that effect, in proof of which proceedings of the foudjaree court are extant. By the lessee's relinquishment of the farm, Motee Soondree Dasse, having acquired the undoubted right of collecting the rents in 1250 F. S., appointed the said Mahomed Hossein, or former thikadar, her mooktyar and tehsildar from that year; and he accordingly collected the rents from the kutkinadars and ryots from Assin to Assar of that year; subsequently, on the dismissal of the tehsildar, the plaintiff was appointed to succeed him both as mooktyar and tehsildar, agreeably

to which he received from the former various leases of kutkinadars and ryots, and made arrangements with others. The defendant, Mya, however, neither paid the rent due from his kutkina, nor took a fresh lease, nor relinquished possession of the mouzahs underlet to him. Plaintiff accordingly sued him summarily in the collectorate for rupees 233-4, as arrears of rent for 1250 F. S., after deducting rupees 436-8-3, paid in by the tehsildar, Mahomed Hossein, out of the total kutkina jumma of 650 rupees for that year, and rupees 19-0-7, batta and interest, or total rupees 249-3-1. This suit was dismissed by the assistant collector, on the ground of the kutkinadar's reply being that he had taken the kutkina not from the plaintiff, but from Mahomed Hossein, to whom he (the kutkinadar) had paid the jumma, viz. rupees 665; and the assistant collector dismissed the suit without enquiring into the correctness or otherwise of the receipts. In addition to this, the defendant, Mya, had caused him (plaintiff) to incur an expense of 7 rupees, 6 annas, on account of costs in the summary suit. He therefore now sues to recover altogether rupees 305-11-7.

The defendants answer by pleading that they took the kutkina lease from the thikadar, Mahomed Hossein, who, in consequence of the jumma being excessive, remitted 75 rupees per annum; that the plaintiff has no just claim upon them, the rent due for 1250 F. S., viz. rupees 665-2-3, having been discharged. Moreover there is a surplus of rupees 15-2-3, to be credited in part payment of the rent for 1251 F. S.; and Mahomed Hossein's receipts are forthcoming.

On the 29th September 1847, the sudder ameen gave judgment as follows: The defendants' denial of the plaintiff's claim is to no purpose, because they have admitted in the summary suit both the taking of the kutkina and the amount of jumma; while the receipts and letter purporting to be from the thikadar, and remitting 75 rupees of the jumma, and which they had filed in that suit, were not proved, the case having been at once dismissed on the mere statement of the defendants. The letter said to be written by the thikadar is not to the point, because the thikadar had resigned his lease before the date on which the letter purports to have been written, and what right could the thikadar have in that case to reduce the jumma? Moreover, in the answer in the summary suit, the defendants made no mention of such a letter of remission; and the evidence of the witnesses, who have now deposed to its correctness, is not trustworthy, or credible. Respecting the receipts too, one of them, dated 7th Mang 1250 F. S., for 100 rupees, is clearly a receipt for rent of the preceding year 1249 F. S., and thus the statements of the defendants regarding 100 rupees and 75 rupees are clearly disproved. There is, however, one receipt for 50 rupees, dated 24th Jeit 1250 F. S., and for which, the plaintiff disallowing it, the defendants have not received credit, but which

is attested by witnesses. Deducting this latter sum, the sudder ameen gave the plaintiff a decree for rupees 255-11-7.

The grounds of appeal are for the most part a repetition of those on which the defence rested, viz. as to the defendants' having nothing to do with the plaintiff, they having taken the kutkina from Mahomed Hossein, to whom the rent was paid. They, however, plead that the letter of remission has been proved, but admit that the receipt of 100 rupees, dated 7th Mang, was for rent of 1249 F. S.; and they also further urge that, according to their calculation, out of the yearly jumma of 650 rupees, the sum of rupees 590-2-3 having been discharged, there remained only a balance of rupees 59-13-1, thus making the decree against them by the sudder ameen's calculation unjust.

To this the plaintiff, as respondent, replies that, credit having been given in the plaint for the portion of the rent realized from the defendants' kutkina lease for 1250 F. S., the suit has been laid to recover the balance; and that Mahomed Hossein, as tehsildar, had no authority to remit. Indeed, in proof of his bad faith, it may be mentioned that Mahomed Hossein having embezzled rupees 8,663-7, out of the revenue for 1250 F. S., he (respondent) sued him in the court of the principal sudder ameen, and though he only in that court got a decree for rupees 468-13-2, yet on appealing to the Sudder Court he recovered the whole of his demand.

JUDGMENT.

I discover no ground whatever for disturbing the judgment of the sudder ameen. His decision is therefore affirmed, and the appeal dismissed, costs being chargeable to the appellants.

PRESENT: W. ST. QUINTIN, ESQ., ADDITIONAL JUDGE.

THE 7TH JULY 1848.

No. 23 of 1847.

Appeal against a decree passed by Moulvee Mahomed Ibrahim, Officiating Principal Sudder Ameen, on the 22d September 1847.

Lala Mungul Singh, Lala Rohee Singh, Lala Kashee Ram, and Lala Teekum Lal, (Defendants,) Appellants,

versus

Oodun Lal and Doodraj Singh, (Plaintiffs,) Respondents.

THIS suit was instituted on the 4th February 1846, to recover the sum of rupees 1,125-13-16, being the amount, principal and interest, due on account of the income of a farm of 8 annas in mouzali Doulutpoor, from Assar 1245 up to 1248 F.

The plaint sets forth that this farm was taken jointly between the plaintiff, Oodun Lal, and the defendant, Teekum Lal, in the name of his son, Jankee Ram, from the proprietor, Meer Ahmed Hossein; that Oodun Lal subsequently admitted the plaintiff, Doodraj Singh, to a third share in his half share of the farm; that the lease was from 1243 up to 1248 F., and the pottah, dated 20th Kartick 1238 F.; that up to Jeit 1245 these parties occupied accordingly, when the estate was put up for sale as the property of Meer Ahmed Hossein, in execution of a decree had against him; that on this occasion the objections urged by Oodun Lal and Teekum Lal were recognized by the officiating principal sudder ameen on the 12th August 1837; that prior to the enquiry into these objections the village was sold at the collector's, on the 2nd August 1837, and purchased by one Beharee Lal, who again sold it to Mungul Singh, Rohee Singh and Kashee Ram (defendants); that Teekum Lal, to injure the plaintiffs, and in collusion with these purchasers, entered into a deed of partnership with them for 4 annas, and thus ousted the plaintiffs from their farm; that Oodun Lal presented a miscellaneous petition to have their occupancy upheld, when he was referred to a regular suit; and in an action for possession and mesne profits accruing from 1245 up to 1247, a decree was passed in their favor for possession, and they were referred to a separate regular suit for the mesne profits: hence the present suit.

The defendants, in reply, admit the plaintiffs' claim to a half share in these mesne profits, and plead that the jumma-bundee of the plaintiffs is quite incorrect; that after deducting rents due and village expences, a balance of 526 rupees, 2 annas, 9 pie appears in their favor; and as they were about to institute a suit against the plaintiffs to recover this sum, they were anticipated by the present action.

The officiating principal sudder ameen decides that the merits of this case rest on the correctness of the jummabundees produced by both parties; that the accounts of both for 1245 nearly tally; that in the former case the defendants raised no exceptions to the valuation of mesne profits made by the plaintiffs for 1246 and 1247 F.; that the witnesses produced by the plaintiffs identify the correctness of the valuation for 1246 and 1247, and also for 1248; that the correctness of the plaintiffs' jummabundee is proved by the copy of a petition of Imut Decal Singh, the brother of Teekum Lal; that as the amount of wasilaut was not fixed, interest cannot be decreed: a decree is therefore passed in favor of the plaintiffs for the principal claimed and costs accordingly, with interest from the date of the decree up to realization of the amount.

Against this decree the defendants appeal, but raise no new points.

JUDGMENT.

I see no reason to distrust this decree. The rent due to the appellants has been deducted from the amount claimed by the respondents as wasilaut, and the reasons given by the principal sudder ameen for the award are just and fully borne out on the records of the case. I therefore uphold this decree, and dismiss the appeal, with costs, without issuing notice for the attendance of the respondents.

THE 7TH JULY 1848.

No. 24 of 1847.

Appeal against a decree passed by Moulvee Mahomed Ibrahim, Officiating Principal Sudder Ameen, on the 22d September 1847.

Lala Mungul Singh, Lala Rohee Singh, Lala Kashee Ram, and Lala Teekum Lal, (Plaintiffs,) Appellants,

versus

Oodun Lal and Doodraj Singh, (Defendants,) Respondents.

THIS suit was instituted on the 19th March 1846, to recover the sum of Company's rupees 684-15-2, being the amount, principal and interest, due on account of rent for a farm of 8 annas in mouzah Doulutpoor from 1245 to 1249, after deducting the amount collected and received in cash.

The plaintiffs here are the defendants in the preceding case, and set forth their claim as given in their defence.

The principal sudder ameen, for the reasons given in the preceding case, decides against the plaintiffs, who in appeal urge no new point.

JUDGMENT.

For the reasons given in the former case, I uphold this decree, and dismiss the appeal with costs.

THE 11TH JULY 1848.

No. 10 of 1847.

Appeal against a decree passed by Moulvee Syud Mahomed Fureed-ooddeen, Moonsiff of Aurungabad, on the 20th November 1846.

Moost. Buhoreeah Noranee Kooner, Reedhoo Singh, Nanhoo Singh, Nehal Singh, and Sunker Singh, (Plaintiffs,) Appellants,

versus

Rajah Heitnarain Singh, (Defendant,) Respondent.

THIS suit was instituted on 21st August 1845, to recover possession of 12 beegahs, 10 biswas of land, out of 25 beegahs, called pokra Malha, in the village of Kassimpoor, and to set aside a decision of the superintendent of survey, dated 12th October 1844. Suit valued at 150 rupees.

The plaint is that the villages of Kassimpoor and Budurpoor were formerly the property of Baboo Jeynath Singh, and were sold in 1211 F. to Mitterjeet Singh and Lalla Poknarain Singh, and divided by the collector; that the ameen included the whole of this pokra in the village of Kassimpoor; that Kassimpoor was subsequently purchased by the plaintiffs, and in 1250 F. the defendant's omlah succeeded in getting half the pokra included in the village of Budurpoor; that the survey deputy collector, without giving notice to the plaintiffs, took the depositions of the village authorities and cultivators, and ruled half the pokra to Kassimpoor and half to Budurpoor; that the plaintiffs were prevented from appealing by circumstances over which they had no control; that they did eventually petition the superintendent of survey, who rejected their petition on the plea that they had allowed the period for appeal to expire; that as the whole pokra belongs to Kassimpoor, this action is brought to recover possession.

The defendant, in reply, pleads that he is the proprietor of 14½ annas of Budurpoor, and the plaintiffs ought therefore to have made the other partners and the Government parties to this suit, that half the pokra belongs to Budurpoor, and the claim of the plaintiffs is not tenable.

The moonsiff decides that the deputy collector's decision allotting this pokra in equal shares to these parties, is good and valid, and cannot be disturbed; and that the khusrāh produced from the collector's office and drawn out at the time the villages were divided, is neither signed by the ameen, the proprietors, nor the collector, nor is it dated. The claim is therefore dismissed.

In appeal, the plaintiffs declare the khusrāh to be valid, since it was on this document that the villages were divided.

JUDGMENT.

I do not at all agree with the moonsiff in his finding in this case. If the division of these estates was not formed on the khusrah produced from the collector's office, on what khusrah was it founded? On the 27th April the respondent was called upon to produce the genuine khusrah to shew that half of this pokra was allotted to Budurpoor; the respondent has failed to do this. I therefore recognize the validity of the khusrah sent by the collector on the requisition of the moonsiff, and which allots the whole of this pokra to the appellant's village Kassimpoor, and pass a decree for the appellant with all costs.

THE 15TH JULY 1848.
No. 26 of 1847.

Appeal against a decree passed by Moulvee Mahomed Ibrahim, Officiating Principal Sudder Ameen of Behar, on the 28th September 1847.

Syud Shah Ullee and Syud Ahmed Hosein, (Plaintiffs,) Appellants,
versus

Moost. Sadutoonnissa *alias* Begma Jan, Moosafir Allee, Meer Oomyd Allee, Moost. Lutecfun *alias* Khedun, and Moost. Hyatun, (Defendants,) Respondents.

THIS suit was instituted on the the 1st May 1844, to establish a right of pre-emption, and set aside a deed of sale, dated 1st April 1844, for 5 annas, 4 dams, 8½ cowrees of mouzah Mohceooddeenpoor Gillancee, and 10 annas, 8 dams of mouzah Koosmun Myec and four keeta plaster houses, situated in one of the divisions of the city of Behar. Suit valued at rupees 1,327-6-9.

The plaint sets forth that Mahomed Bakur, the uncle of the plaintiffs, executed this deed of sale in favor of his daughter, Moost. Sadutoonnissa, the defendant; that the plaintiffs are co-sharers in the estates, which were settled as one lot; that the houses are close to the residence of the plaintiffs; that Mahomed Bakur alienated this property to injure the plaintiffs, his rightful heirs; that this deed of sale for 2,000 rupees was presented for registry on the 6th April 1844, and on the 15th Bysack the plaintiffs became cognizant of the transaction, and immediately went through the required process, and claimed a right of pre-emption; that the defendants would neither accept the cash sent nor comply with the plaintiffs' requisition that the deed of sale should be executed in their favor; hence this action. On the 26th November 1844, the plaintiffs enter a supplementary plaint, stating that through fear that the claim of the plaintiffs should be established, Moost. Sadutoonnissa had sold the share of mouzah

Gillanee to Meer Oomyd Ally and Meer Moosafir Ally, under deeds of sale executed in the names of their wives, Moostn. Luteefun and Hyatun.

Sadutoonissa, in reply, pleads : first, that she alone is the heiress of Mahomed Bakur her deceased father ; secondly, that to establish a claim of pre-emption, the law requires that the preliminary steps to establish this right, should be complied with immediately on the information of the sale reaching the claimant, and in this instance, on the plaintiffs' own showing, they became privy to the sale on the 6th April, and did not fulfil the requirements of the law till the 15th Bysack, corresponding with the 18th April ; thirdly, that the sale in this instance was not a ready money transaction, but a barter for the marriage portion of the defendants' mother, that there are other partners in the estate who do not advance claims of pre-emption.

The defendants, Syud Oomyd Allee and Syud Moosafir Allee, in reply, plead that they are neither sellers nor buyers ; and that the action against them is untenable.

Moostn. Luteefun and Hyatun, defendants, in reply, plead in support of the allegations of Moost. Sadutoonissa, and add that they purchased Moost. Sadutoonissa's share in mouzah Gillanee, for 1,600 rupees ; and that the plaintiffs should have claimed a right of pre-emption on the re-sale.

The principal sudder ameen decides that the sale is a mere nominal one between father and daughter, and a trifling sum named as the price of valuable property ; that the claim of pre-emption is not good in this case according to a precedent of the Sudder, dated 11th December 1837, and in which a futwa is given, which supports the futwa of this court's law officer, and that declares that the plaintiffs' claim for pre-emption is untenable ; that besides this, the requirements of the law to make a claim of this nature valid were not complied with : the plaint is therefore dismissed.

Against this decree the plaintiffs institute this appeal, on grounds similar to those set forth in the plaint, with the addition of a lengthy attempt to gainsay the reasoning of the principal sudder ameen.

JUDGMENT.

The vendor and vendee in this instance being father and daughter, and the palpably inadequate sum for which this property was bartered, as shown more especially in the alleged re-sale of an insignificant portion of it for rs. 1,600, affords the strongest presumptive evidence that the transaction was a *bye-mamlah*, or *bye-tuljeea*, or mere nominal sale, and not a *bond fide* sale ; and as such sales are not valid in law, this claim for a right of pre-emption falls to the ground. Besides this, the precedent of the Sudder produced by the respondents, and the futwa of the law

officer of this district, fully warrant the principal sudder ameen in dismissing this claim, and this court in confirming the award. I therefore dismiss the appeal, with costs, without causing the attendance of the respondents.

THE 20TH JULY 1848.

No. 17 of 1847.

Appeal against a decree passed by Moulvee Syud Mahomed Ibrahim Khan, Acting Principal Sudder Ameen of Gya, on the 23d July 1847.

Chukowree Lal, agent of Oomut-ool-Hossein Begum, Moost. Tukeeah Begum, Ulumoonnissa Begum, the daughters, and Moost. Mohumdee Begum, the grand daughter, the heirs of Nuwab Syud Akber Allee Khan, deceased, (Plaintiffs,) Appellants,

versus

Duripnath Singh, Anunt Singh, Bishundharee Singh, Futeh Nurain Singh, Purshad Singh, Hurdeecal Singh, and Sooburun Singh, (Defendants,) Respondents.

THIS suit was instituted on the 18th February 1845, to obtain possession in the altungah village of Koormeepoor, valued at 1,620 rupees, being eighteen times its income, and to recover mesne profits, valued at 1080 rupees, accruing between the month of Phalagoon 1240 F. and the 27th Maugh 1252 F. The whole suit with interest valued at 2,880 rupees.

The plaint sets forth that this estate was given in farm by Syud Akber Ally to Surubjeet Singh, the ancestor of the defendants, on a lease for his life; that during the life-time of Surubjeet, the rent was regularly paid, and subsequently up to 1240 F. the defendants, the heirs of Surubjeet, have paid the rent; that as the plaintiffs have resided for a length of time in Calcutta and other cities, they have had no opportunity of cancelling their lease since the death of Surubjeet: this action is brought for that purpose, and to recover possession.

The defendants, in reply, claim to hold as perpetual mokururee-dars, under a deed, dated 11th Zehij 1169, and plead that Surubjeet died in 1237, and consequently this action is barred by the statute of limitations; that the rights and interests of the defendant, Anunt Sing, in this mokururee were put up for sale in satisfaction of a decree, when no objections were urged on the part of the plaintiffs.

In their rejoinder the plaintiffs plead that Surubjeet died in 1240, and the suit is therefore cognizable; and that a deed of agreement, dated 6th April 1823, entered into by Surubjeet proves that he only had a life interest in his farm.

The cazee, whose seal is attached to this ikrarnamēh, petitions the court, declaring the deed to be a forgery.

The principal sudder ameen decides that between farmer and tenant a pottah and kuboolecut are required; and the plaintiffs in this case have no kuboolecut to shew—their claims rest solely on the validity of the ikrarnamēh; that the stamp paper, on which this deed was written at Benares, was purchased at Behar; that the cazee's seal was attached to the document one year after its date, and the authenticity of the sealing is denied by the cazee, the deed is therefore not trustworthy; that to the sunnud produced by the defendants is attached the seal of Heydaet Ullee, and the deed confers an hereditary mokururee title on the ancestors of the defendants; that two of the plaintiffs' witnesses depose to the existence of this mokururee deed: the plaint is therefore dismissed with costs.

Against this decree the plaintiffs appeal, in which they attempt to prove that the mokururee sunud is a fictitious one.

JUDGMENT.

The points to be decided in this case are, first, whether the action was brought within the statute of limitations; second, and whether Surubjeet Singh held a life or a perpetual interest in this estate. The witnesses for the defence depose that Surubjeet died in 1237; and as I am inclined to believe them, and the suit was not instituted till 1252, this action is barred by the law of limitations. Again as regards the second point, I quite agree with the principal sudder ameen in rejecting this claim, the only document to prove that Surubjeet held only a life interest in this estate is the ikrarnamēh, which is not trustworthy. Besides, it is impossible to believe the allegation of the appellants, that they only heard of Surubjeet's death in 1245, seven years, according to their own shewing after it occurred, although their agents were residing next door in charge of other portions of the appellants' estates; and it is still more improbable, if there was any truth in their claim to set aside this holding, that they should have refrained from instituting this suit till 1252 F. For these reasons I uphold this decree, with all costs on the appellants.

THE 21ST JULY 1848.

No. 43 of 1847.

Appeal against a decree passed by Syud Tufuzzul Hosein, Sudder Ameen, on the 26th May 1847.

Gopaul Pearee and Ramchurn Lal, (Defendants,) Appellants,
versus

Buhoree Bhya, (Plaintiff,) Respondent.

THIS suit was instituted on the 6th February 1846, to recover the sum of 586-14-4, being the amount, principal and interest, due on a summary decree dated 6th December 1844.

The plaint sets forth that the rights and interests of the plaintiff in the village of Bubbhun Poorah Khoord were leased to the defendant, Gopaul Pearee, at an annual rent of 900, on the security of the other defendant, Ramchurn Lal, the lease to extend from 1248 to 1252 F.; that the rents were duly paid up to 1250 F., and in 1251, the defendants having fallen into arrears, a summary action was brought and a decree obtained; that since real property cannot be sold in satisfaction of a summary decree, this action is brought to recover the amount awarded.

The defendants, in reply, plead that this action is contrary to law, and that they have paid all rents due and hold receipts.

The sudder ameen decides that from the precedents produced from the sudder ameen and principal sudder ameen's court, it appears that a suit of this nature is cognizable; and since the defendants do not produce their receipts, a decree is passed in favor of the plaintiffs.

Against this decree the defendants institute an appeal, in which they plead that their agent was prevented from producing their receipts, and request to be allowed to enter them and have the case re-investigated.

JUDGMENT.

It was superfluous to call on the appellants to produce their receipts, since this claim is established by a judicial award already passed, and the sudder ameen is quite right in decreeing issue of that award upon the appellants. Taking case No. 189 of 1841, at page 415, of No. 10, of the Decisions of the Sudder Dewanny Adawlut for November 1845, as a precedent to shew that an action of this nature will lie, I confirm this decree, and reject the appeal, with costs, without issuing notice for the appearance of the respondents.

THE 22D JULY 1848.

No. 44 of 1847.

Appeal against a decree passed by Syud Tufuzzul Hosein, Sudder Ameen of Behar, on the 1847.

Junglee Ram, (Defendant,) Appellant,

versus

Shewdyal Sahoo and Sewah Sahoo, (Plaintiffs,) Respondents.

THIS suit was instituted on the 21st May 1845, to recover the sum of rupees 391-3-9, due on an account current.

The plaint sets forth that the sum of 213 Sicca rupees, 4 annas, was due to the plaintiffs from the late Rajah Mitterjeet Singh, for goods supplied; that the rajah included the plaintiffs' names and dues with other creditors in an order on the defendant, the rajah's treasurer, for 10,000 rupees; that the order was dated 24th Assar

1246, on which date the defendant transferred this item from the rajah's account to the credit of the plaintiff's account, which has not been settled : hence this action.

The defendant, in reply, denies this order for payment, and pleads that if the claim was just the item would have been identified by the signature of the defendant ; that this item never was entered in his separate account with the plaintiffs ; that the accounts between the plaintiffs and the defendant were settled by chittah, which contains no memorandum of this item.

The sudder ameen decides that the evidences, oral and documentary, fully prove the claim of the plaintiffs, as also does the result of the investigation of the ameen appointed to inspect the account books of the parties ; and that on inspection by the court of the plaintiffs' khata buhee for 1246 F., the claim is established ; a decree is therefore passed in their favor.

Against this decree the defendant appeals on the plea that the sudder ameen ought to have called for the plaintiffs' daily account for 1246 F., and in that this item would not be found.

JUDGMENT.

Since the merits of this claim have been fully investigated by the appointment of an ameen in the regular form, and the investigation shews the claim to be a just one, and this is confirmed by the sudder ameen's own inspection of the account book for 1246 F., I can see no reason for further enquiry, and therefore confirm the decree, and dismiss the appeal, with costs, without issuing notice for the attendance of the respondents.

THE 25TH JULY 1848.

No. 45 of 1847.

Appeal against a decree passed by Syud Tufuzzul Hosein, Sudder Ameen of Behar, on the 23d July 1847.

Kutohul Sing, (Defendant,) Appellant,

versus

Goshyeen Gunput Pooree, (Plaintiff,) Respondent.

THIS suit was instituted on the 11th September 1846, to recover the sum of 615-11-1, being the amount, principal and interest, due on a putwaree's account for cultivation in the village of Jogah Chuk for 1252 F., and to set aside a decree of the revenue authorities.

The plaint sets forth that this and other villages were leased out to the plaintiffs by the proprietors on a lease from 1252 F. up to 1262 ; that the deed of lease was drawn out in the names of Girdharee Muhto and Meelun Raoot, dependants of the plaintiff ; that the defendant is a *kashtkar kudeem*, or an old cultivator, in this village, and cultivated in 1252, and only paid 12 rupees of his

rent; that a distraint was taken out against the defendant for the balance due from him according to the village accounts, and the sequestration was removed in a summary decree by the revenue authorities; that the objections then urged by the defendant that Meelun Raoot and Girdharee Muhto were the farmers, was groundless.

The defendant, in reply, denies having cultivated in this village in 1252; that the pottah in which his property was sequestered, was in the name of Meelun Raoot and Girdharee Muhto; and that Durgahee Lal, who has drawn up this account, is not the village putwaree.

The sudder ameen decides that the decree passed by the revenue authorities was an *ex parte* one, and proofs were not taken from the plaintiff, and no investigation was made; that the gomashtha, the putwaree, and the residents of the village depose to the cultivation of the defendant; that there does not appear to be any valid objection to the amount of the demand: a decree is therefore passed in favor of the plaintiff.

Against this decree the defendant appeals on the pleas set forth in his first reply.

JUDGMENT.

I agree with the sudder ameen in considering the summary decree of the revenue authorities withdrawing this sequestration, to have been passed without sufficient consideration, and therefore not to be binding. It is proved that the appellant is an old cultivator in this village, and that he did cultivate in 1252 F.; and as the account against him appears to be fair and proper, there can be no reason to disturb this decree, which is hereby upheld, and the appeal dismissed, with costs, without issuing notice for the attendance of the respondent.

THE 27TH JULY 1848.

No. 41 of 1847.

Appeal against a decree passed by Syud Tufuzzul Hosein, Sudder Ameen of Behar, dated 26th June 1847.

Baboo Deeanut Roy and Baboo Jykurun Lal, (Plaintiffs,) Appellants,

versus

Sheikh Hydur Buksh and Roy Joogul Keshwur, (Defendants,) Respondents.

THIS suit was instituted on the 12th June 1845, to establish a right to a water-course and embankment, flowing from Nuddee Tatee, appertaining to the village of Buleeharee. Suit valued at 500 Company's rupees.

The plaint sets forth that this water-course from time immemorial has been the means of watering the lands appertaining to the plaintiffs' village of Buleeharee; that another water-course from Nuddee Tatee supplies water to the defendants' village of Mohsinabad Korawan; that the mouth of the defendants' pyne was stopped up, when the defendants opened it out and supplied themselves with water; that in 1251 F. the plaintiffs were mehding their pyne when they were hindered by the defendants, who charged them before the criminal court with opening a new water-course; that the charge was dismissed by the magistrate, and this order was subsequently reversed in appeal before the sessions judge, who referred either party who might be aggrieved to a regular action in the civil court; that this order is an injury to the plaintiffs, hence the present action; that the maps of the professional survey shew the existence of an ancient water-course on the plaintiffs' estate.

The defendants, in reply, deny the existence of this alleged pyne on the plaintiffs' estate, and plead that the plaintiffs were opening out a new water-course, which gave rise to the complaint to the magistrate; that the plaint does not state on what land this claimed water-course and bank are situated, nor where they commence, nor where they end; that the plaintiffs are supplied with water from the reservoir of Meer Chuk, and that is the pyne exhibited in their map.

The sudder ameen decides that, from the maps produced by both parties and the discrepancy in the evidence of the plaintiffs' witnesses, no trace of this alleged pyne is to be found, further than in the survey map it is mentioned that a pyne for the Tatee Nuddee is situated on the southern side of the plaintiffs' village, but no mention is made as to where it flows, or whence it springs; that the map of the defendants shews that where the plaintiffs allege the mouth of the pyne to be (which they were opening out,) in the middle of the reservoir of the defendants' village, and quite a new pyne; that if there is truth in the existence of a pyne at this spot, and the defendants have dispossessed the plaintiffs, they, without doubt, would sue for possession. The plaint is therefore dismissed.

In appeal, the plaintiffs plead that the existence of this pyne is recorded in the survey map, and it is not usual to record the extent of a water-course; that the sudder ameen ought either to have gone himself or sent some trustworthy individual to conduct a local investigation.

JUDGMENT.

The simple question to be decided in this case is whether or no a pyne from Tatee Nuddee to the village of Buleeharee exists or not. It is certainly marked in the appellants' map of Buleeha-

ree; and if the sudder ameen was not satisfied as to the correctness of this map of the professional survey, he ought to have visited the village, and tested the point by an inspection; and until this is done, the investigation is incomplete. I therefore reverse this decree, and return the case for re-investigation, with reference to the above remark. The usual order will issue for a refund of the stamp value to the appellants.

THE 28TH JULY 1848.

No. 46 of 1847.

Appeal against a decree passed by Syed Tufuzzul Hossain, Sudder Ameen of Behar, on the 21st July 1847.

Oodwunt Singh, Dowlut Singh, Brij Lal Singh, and Lutchmun Singh, (Defendants,) Appellants, in the suit of Dhuttoo Singh and Chutturdharee Singh, (Plaintiffs,) Respondents,

versus

The Appellants and Lochun Singh, Sudhoo Singh, Puryag Singh, Bhoop Singh, Gumbheer Singh, Gungoo Singh, Muhesh Singh, Thukoree Singh, and Bhurut Singh, (Defendants,)

THIS suit was instituted on the 11th July 1846, to recover possession in two shares out of three shares in 40 beegahs of land out of 150 beegahs of cultivation in the village of Unjoonar, excluding the third share of their own brother, Boolakee Singh; and to recover the sum of rs. 188-14-2, as the cultivator's share for 1253 F., by setting aside the decisions of the criminal authorities passed in an Act IV. case. Suit valued at 488-14-2.

The plaint sets forth that Kotohul Singh, the plaintiffs' grandfather, died, leaving four sons, viz. Jograj Singh, Moheeput Singh, Oodwunt Singh, and Assa Singh, who in 1228 F. divided their ancestral domains in this way—the farm and cultivation of Unjoonar was allotted to Moheeput Singh, the father of the plaintiffs; the cultivation of Khyrah was allotted to Jograj Singh, whilst the cultivation in Bulooah fell to the share of Oodwunt Singh, and the cultivation of Kudhur to Assa Singh;—that according to this division each party occupied; that Sudhoo Singh and Puryag, the sons of Jograj Singh's second wife, denied the division and instituted a complaint under Act IV., and on the 18th March 1845, the complaint was dismissed; that the defendants dispossessed the plaintiffs of 35 beegahs of their cultivation in Unjoonar on the 5th Bhadoo 1252; that the plaintiffs and their brother, Boolakee Singh, complained under Act IV., and after the institution of their complaint they were ousted from 5 beegahs more; that the magistrate dismissed their complaint, and this award was upheld in appeal before the sessions court: hence the present suit.

The defendants, Oodwunt Singh, Dowlut Singh, Brij Lal Singh, and Lutchnun Singh, in reply, plead that, after the death of Kotohul Singh, in 1228 F., 150 beegahs of cultivation in Unjoonar was divided into four equal shares; that 27 beegahs, 10 biswas was their right of cultivation; that the present claim for the whole land is groundless; that the plaintiffs under Act IV. claimed 35 beegahs, and they now allege that they were subsequently dispossessed of 5 beegahs—the two claims therefore in one suit is irregular; that in the Act IV. case they offered the wager of law to Boolakee Singh, and their case was dismissed as not proved; that Boolakee Singh is no party to this suit.

Sudhoo Singh, in his reply, admits the claim of the plaintiffs, and pleads that he has no concern in the matter at issue.

The other defendants allow their case to go by default.

The sudder ameen decides that the objections set up by the defendants against this claim, are not trustworthy, because it is proved that the plaintiffs' father had no cultivation in any of the other villages where the defendants and their brothers held a right of cultivation; that the defendants' witnesses give discrepant evidence, whereas the plaintiffs' witnesses fully prove their claim; that the heir at law of Oodwunt Singh in the Act IV. case, and Sudhoo Singh in the present suit, admit the right of the plaintiffs; that in the Act IV. case Oodwunt Singh himself admitted that the oath of Boolakee Singh was not emergent since his brothers would urge objections: the Act IV. decision is therefore reversed, and a decree given in favor of the plaintiffs against the defendants who plead to the suit, who will give possession of 35 beegahs, 10 biswas to the plaintiffs, and pay 100 rupees, which appear to be the equitable value of mesne profits.

In appeal the defendants urge that the plaintiffs did not produce any *tukseemnameh*, that the sudder ameen ought to have pointed out on what points the evidence of their witnesses was discrepant.

JUDGMENT.

I see no reason to disturb this decree. Here we have four distinct and separate plots of cultivation descending to these parties from their common ancestor, Kotohul Singh. Now the appellants do not pretend to say that the respondents have any right or interest in three of these plots, nor do the respondents claim any right in them;—this affords strong presumptive evidence that this fourth plot descended to the respondents from their father, Moheput Singh, and that the division of the ancestral property, as alleged by the respondents, was *bonâ fide*. Boolakee Singh, the brother of the respondents, appears to have sacrificed his right and interest in the cultivation of Unjoonar in the Act IV. case; but his act is in no way binding on the respondents. The sudder ameen's reason-

ing is fully borne out on the record of the case. I therefore uphold the decree, and dismiss the appeal, with costs, without issuing notice for the appearance of the respondents.

THE 28TH JULY 1848.

No. 47 of 1847.

Appeal against a decree passed by Syed Tufuzzul Hosein, Sudder Ameen of Behar, on the 29th July 1847.

Bunsee Lal, (Defendant,) Appellant, in the suit of Durshun Singh and Purshun Singh, (Plaintiffs,) Respondents,
versus

Bunsee Lal, Lutchmun Lal, and Mohun Lal, Defendants.

THIS suit was instituted on the 23d July 1845, to recover the sum of rupees 612-9-16, being the amount, principal and interest, due on an instalment bond, dated 4th Jeit 1896 Sumbut.

The plaint sets forth that a debt of Sicca rupees 595-12-1 was due from Peearree Lal to the plaintiffs' father; that on the demise of Peearree Lal, the defendants Lutchmun Lal and Mohun Lal, for themselves and as the guardians of Bunsee Lal, a minor, the sons and heirs of Peearree Lal, acknowledged the debt and entered into this instalment bond; that 141 rupees have been subsequently paid, and this suit is brought to recover the balance.

Mohun Lal, one of the defendants, in his reply, pleads that Bunsee Lal has nothing to do with this claim, as he did not succeed to any of the effects of Peearree Lal; that 297-12-2 $\frac{3}{4}$ is due from himself to the plaintiffs, out of which 141 rupees have been paid, and he is now ready to pay the balance of his portion of the liability.

Bunsee Lal, in reply, pleads in objection his minority and his non-succession to any ancestral property; and that his brothers are the responsible party.

The defendant, Lutchmun Lal, allows the suit to go by default.

The sudder ameen decides that the defendants admit the claim of the plaintiffs, and it is proved on evidence, that Bunsee Lal did succeed to ancestral property; and as it is recorded on the back of the instalment bond, that 141 rupees were paid through Mohun Lal, a decree is passed, holding Mohun Lal responsible for half the debt *minus* the 141 rupees paid, and the other two defendants jointly answerable for the balance.

Against this decree Bunsee Lal alone appeals, on the plea that the ancestral houses in his possession were made over to him as a maintenance by his brothers, Mohun Lal and Lutchmun Lal; and that he ought to be exempted from all responsibility.

JUDGMENT.

The simple question to be decided in this appeal, is, whether or no the appellant is responsible for this debt; he is the joint heir to Pecaree Lal with the other two defendants; and the allegation that the ancestrel property occupied by him was made over by his brothers for his maintenance, is worthy of no consideration. I agree with the sudder ameen that these heirs are jointly responsible for their father's debt, and therefore uphold the decree, and dismiss the appeal, with costs, without issuing notice for the attendance of the respondents.

THE 29TH JULY 1848.

No. 19 of 1847.

Appeal against a decree passed by Mr. E. DaCosta, the then Additional Principal Sudder Ameen, on the 5th April 1843.

Dilleram Kuturyar Gyawal, (Defendant,) Appellant,

versus

Jugurnath Rae, (Plaintiff,) Respondent.

THE merits of this case are of a peculiar nature, and require to be detailed in an irregular way. A house belonging to the defendant, Dilleram, was rented by the plaintiff, Jugurnath; and in consequence of the rent not being paid Dilleram brought his action, when Jugurnath objected to the demand on the plea that he had been put to expence for repairs and the erection of out-houses. On the 26th January 1835, the moonsiff of Gya passed a decree in favor of Dilleram for the balance of rent, and referred Jugurnath to a separate suit to recover his outlay for repairs, &c.

Dilleram instituted a second suit to recover a further balance of rent and to *oust* Jugurnath. On the 9th August 1842, the moonsiff of Gya passed an *ex parte* decree in favor of Dilleram *in full of his demand*. This decree went up in appeal before Mr. DaCosta. On the 17th January 1843, Jugurnath instituted a suit against Dilleram to recover 150 rupees, the value of his outlay in repairs, &c., which was also made over to Mr. DaCosta; both the appeal and the regular suit were decided by this officer on the same date. The decree appealed against was upheld in all its integrity, and in the regular suit a decree was passed, dismissing the claim of Jugurnath, and at the same time ruling that if Jugurnath chose to remain in the house in question, he must pay rent to Dilleram, or vacate it, and take away his *umlah*. Here we have conflicting orders. In the appeal case a *final* order is passed, ousting Jugur-

nath ; and in the regular suit Jugurnath is allowed the option to occupy as a tenant. Dilleram took out execution of the final decree, when Jugurnath produced his decree to shew that he had the option of staying in the house. However on the 30th January 1847, the moonsiff passed an order on the petition for execution ; that an ameen should assess the rent and obtain an agreement to pay from Jugurnath, who should then be allowed to tenant the house. Dilleram appealed against this order to the judge. Mr. Forbes very justly remarked that the moonsiff ought to have made the discrepancy in the two decrees passed by the additional principal sudder ameen, a subject of reference to this court, instead of passing orders in the case. The moonsiff's miscellaneous order was reversed, and the option given to Dilleram under Construction No. 1048, to appeal within one month from the date of the judge's order. From this order originated the present appeal, in which Dilleram prays to have his decree to oust Jugurnath executed, and to cancel the option given subsequently to Jugurnath to tenant the house in question.

JUDGMENT.

This decree must be amended, and the appellant is clearly entitled to have his decree against the respondent executed ; and the subsequent order giving the respondent the option of tenancing the house in question, must be declared null and void. Ordered accordingly, and the appellant must pay his own expences.

THE 31ST JULY 1848.

No. 50 of 1847.

Appeal against a decree passed by Syed Tufuzzul Hosein, Sudder Ameen of Behar, dated 30th July 1847.

Baboo Kishun Singh, (Plaintiff,) Appellant,

versus

Ramsuhac Singh, Choolhun Lal, and Jugoo Lal, (Defendants,) Respondents.

THIS suit was instituted on the 27th January 1847, to recover the sum of rupees 716-6-3, being the amount, principal and interest, due on a bond, dated 12th Assar 1252 F.

The plaint sets forth that the defendants borrowed 600 rupees from the plaintiff, gave this bond, and will not pay the debt.

The defendants, Jugoo Lal and Choolhun Lal, deny the claim and the validity of the bond, and Jugoo Lal offers the plaintiff the wager of law.

Ramsuhæ allows the case to go by default.

The sudder ameen decides that the plaintiff, in support of his allegations, produces a proceeding of the criminal court to shew that this bond was stolen from him with other property; which is all very plausible, but since the witnesses for the prosecution are not trustworthy, and no mention of this theft was made in the plaintiff's rejoinder, although the theft is said to have happened prior to the rejoinder, the claim is dismissed with costs.

Against this decree the plaintiff appeals on the plea that Ramsuhæ, who was arrested for this theft, did not take any exception to the plaintiff's list of stolen property, in which this bond was inserted; and that the notice of the way in which this bond was lost, was omitted from his rejoinder by an oversight.

JUDGMENT.

The proceedings of the criminal court, noticing this alleged theft, are dated 23d March 1847, and is entered in this suit by the appellant on the 16th June following. The appellant's rejoinder is entered on the 8th of May, and no mention is made of the loss of this bond. This is all very suspicious. Besides this, the evidence goes to shew that the two respondents who plead to the suit are village servants of the appellant; and of the witnesses named to prove the bond, one is a servant of the appellant, another a dosad, and the third a cultivator.

I therefore agree with the sudder ameen that the claim is not proved, and confirm the decree, dismissing the appeal, with costs, without issuing notice on the respondents.

THE 31ST JULY 1848.

No. 53 of 1847.

Appeal against a decree passed by Syed Tufuzzul Hosein, Sudder Ameen of Behar, dated 31st August 1847.

Musst. Nuseebun, (Defendant,) Appellant,

versus

Roop Chund (Plaintiff,) Respondent.

THE merits of this suit are fully detailed at page 126 of the printed Decisions of this district for August 1847.

The case was returned to the then sudder ameen, requiring him to award interest to the plaintiff according to the circular letter, No. 171, dated 4th March 1836.

This has been done by the present sudder ameen, and the defendant institutes an appeal on the pleas that no notice of the institu-

tion of this suit was given; that the bond is not valid; that it is sealed by the cazee of another purgunnah; and that the suit originates in enmity.

JUDGMENT.

This suit was instituted on the 19th March 1845, and the appellant makes her first appearance in the case on the 2nd October 1847, more than a month and a half after the case was returned to have the legal interest awarded to the respondent.

The appellant is quite too late with her objections, and the decree must be upheld, and the appeal dismissed, with costs, without issuing notice for the attendance of the respondent.

ZILLAH BHAUGULPORE.

PRESENT: W. S. ALEXANDER, Esq., JUDGE.

THE 3D JULY 1848.

Case No. 243 of 1847.

*Appeal from the decision of Gunga Gobind Surbadhikaree, former
Moonsiff of Kishengunge.*

Ooree Lall, (Plaintiff,) Appellant,

versus

Brijbhookun Singh and another, (Defendants,) Respondents.

CLAIM, on note of hand: instituted 1st May 1847, decided 6th September 1847.

Plaintiff brought this action on a note of hand, bearing date the 15th Phagoon 1254 F. S., executed by defendants after settling former accounts. The note was for rupees 300, being the amount of the adjusted balance due to plaintiff, and was made payable in two months. Defendants had discharged 25 rupees only within the stipulated period. Plaintiff accordingly sues for rupees 275 principal, and rupees 7-8 interest thereon, altogether rupees 282-8.

Defendants, in their answer, admit the execution of the note of hand, which was given on account of three former bonds and a cash transaction, but demur to the payment on two grounds: 1st, the illegal rate of interest, amounting to two rupees per centum per mensem, charged by plaintiff on the former transactions, and included in the note of hand; and 2ndly, the payment to Chundee Deen Pandey, the gomashthah of plaintiff, on the 15th Bysack 1254 F. S., of rupees 225, for which they held his receipt.

Plaintiff, in his replication, denies the charge of taking illegal interest, or of Chundee Deen Pandey being his gomashthah.

The moonsiff dismissed the claim under the provisions of Section 9, Regulation XV, of 1793, it appearing from the evidence that illegal interest had been charged by plaintiff on former transactions and included in the note of hand.

Against this decision an appeal has been preferred on general grounds, and a summons was issued for respondents to attend.

JUDGMENT.

This was a note of hand given by respondent for a balance due to appellant on former transactions. It must therefore be viewed as a new obligation incurred by the respondents, unless there be

clear proof that, at the time of adjusting the balance, a greater degree of interest had been received, or stipulated to be received, on that balance than is authorized by law. The evidence of respondents' witnesses goes to shew that the plaintiff, who is a bramin, sat dhurna at respondents' door, and made a demand of two rupees monthly interest per centum—threatening to commit suicide unless the note of hand for 300 rupees was executed; that respondents, through fear of the consequences, agreed to give the note of hand; but none of these persons were witnesses to the instrument. Nor were they present when the adjustment of accounts took place. On the part of appellant, the evidence to the execution of the note of hand is clear; indeed, that point is admitted by respondents themselves. Moreover, none of the witnesses state that at the time of executing the document objections were brought forward by respondents, nor were any questions put to them by respondents to shew that they were unwilling parties to the transaction. There is no proof that Chundee Deen Pandey was the gomastah of appellant. I am therefore of opinion that respondents, by executing the note of hand, have incurred a new obligation, which nothing but the strongest and clearest proof of the contravention of Section 9, Regulation XV. of 1793, would justify a court in declaring void, and, in the absence of that proof, reverse the decision of the lower court, and decree the full amount sought to be recovered, to appellant, with costs of both courts, with interest till date of payment.

THE 3D JULY 1848.

Case No. 280 of 1847.

Appeal from the decision of Moulvee Furhut Alee, Moonsiff of Soorujgurrah.

Syud Reaz Alee, and after his decease, Syud Syud Mahomed,
(Plaintiff,) Appellant,

versus

Muddun Singh, (Defendant,) Respondent.

CLAIM on an instalment bond, bearing date 4th April 1846: instituted 15th July 1847, decided 1st December 1847.

The plaint states that, after an adjustment of accounts for rent from the Fusily year 1244 to 1246, a balance of Sicca rupees 24 8 annas appeared against the defendant, who, being unable at the time to satisfy the same, executed an instalment bond, stipulating to repay the balance in three instalments. The defendant having failed in his obligation, plaintiff sues for the amount of the bond, and interest accruing thereon.

Defendant, in his answer, states that in the year 1247 F. S., he lodged a complaint against plaintiff in the criminal court; a summons was issued for his appearance, on which plaintiff sent for defendant and compromised the matter by granting him acquittances, which he had hitherto withheld for the rents paid to him, (plaintiff,) for the years on account of which he now alleges a balance to have been due and the instalment bond executed.

The moonsiff dismissed the claim, because it was evident from the acquittances filed by defendant that no balance was due.

In appeal from this decision, the appellant urges, among other grounds, that the putwarree had no authority to grant the acquittances.

JUDGMENT.

This appellant should have pleaded the above issue in his replication. A plea not urged in the lower court, cannot be entered upon in appeal. It has been clearly shewn by respondent from the acquittances filed, that no rent was due from him from 1244 to 1246, inclusive; it would be absurd, therefore, to suppose that a decree could be given on an instrument, in the absence of any sufficient consideration or reason why the contracting party entered into such an obligation. The decision of the lower court must be upheld. Order accordingly.

THE 31ST JULY 1848.

Case No. 35 of 1846.

Appeal from the decision of Moulvee Mahomed Majid, late Principal Sudder Ameen of Bhaugulpore.

Thakoor Singh, (Defendant,) Appellant,
versus

Hurdyal Singh, (Plaintiff,) Respondent.

Allaff Hossein and Girdharree Lall, Vakeels of Appellant.

Zukeooddeen Ahmed and Muddun Mohun Takoor, Vakeels of Respondent.

CLAIM, possession of land: instituted 24th February 1845, decided 21st July 1846.

This appeal was before heard by this court, and the particulars of the case were given at page 55 of the Decisions for August 1847, as follows: Plaintiff brought this suit against defendant to obtain possession of one anna share of mouzah Kutha, pergunnah Moolkee, with its original villages and dependencies, together with mesne profits from the Fuslee year 1246 to 1252. Suit laid at Company's rupees 2,822-2-9.

The plaint sets forth that, on the 21st July 1838, a sale of the 4 anna share of the aforementioned estate for arrears of public

revenue was effected by the collector of Monghyr; that one Debee Purshaud and the defendant Thakoor Singh became the joint purchasers; that on the same day the said defendant transferred to plaintiff a one anna share out of the two annas—the moiety acquired by defendant on the aforementioned purchase.

That defendant received from plaintiff Company's rupees 162, in the shape of earnest money; that, on the 15th November 1838, a petition was presented to the collector by Amanee Lall, the mokhtar of defendant, setting forth the above particulars; that the remainder of the purchase money was made good on the 23d September* 1839. Notwithstanding, the said defendant refused to put plaintiff in possession.

The defendant, in his answer, pleads the general issue, and specially that no written authority was granted by him to his mokhtar to present a petition to the collector, stating that he (defendant) had admitted plaintiff as a one anna shareholder in the property purchased at the sale.

The principal sudder ameen, on the 6th March 1846, proceeded to dismiss the suit, in consequence of the failure of the plaintiff to adduce proof of the claim brought forward in his plaint.

Plaintiff, on the 30th March, ensuing, submitted an application to the principal sudder ameen for review of judgment passed, filing a summary decision of the court of Sudder Dewanny, under date the 22d March 1842, in which it was ruled that a decree-holder, having bound himself in his vakalutnamah to abide by the acts of his vakeel, must be held to that engagement. By this dictum therefore, of the Superior Court, the defendant in the present suit was bound by the act of his mokhtar; he having bound himself in his mokhtarnamah to abide by the acts of his mokhtar. Under Clause 1, Section 19, Regulation V. of 1831, the papers of the case having been forwarded to the then judge, with an opinion that the review prayed for should be granted, the principal sudder ameen on the 13th April 1846 was authorized to review his judgment passed.

The case again came before the principal sudder ameen, when he set aside his former judgment; being now of opinion, from the summary decision of the Sudder Court, that defendant was bound by the act of his mokhtar. Accordingly he pronounced the sale a valid one, and directed possession to be given to plaintiff, leaving the question of mesne profits to be hereafter adjusted.

Against this decision an appeal was preferred by the defendant, on the grounds that the mokhtarnamah, or power of attorney, furnished the mokhtar with no authority to convey an estate; moreover that the principal sudder ameen had misapplied the decision of the Sudder Court, which was no precedent in the present case.

* This is an error : it should be February.

In reply to the above the respondent insists on the validity of the sale of the one anna share, as set forth in the petition of the mokhtar to the collector.

The sole point for consideration in the present appeal rests on the construction to be put on the mokhtarnamah, which is drawn out in nearly the following terms: We, Debee Purshaud Singh and Thakoor Singh, purchasers of the 4 anna share of mouzah Kutha: whereas an appeal from the order of the deputy collector, relative to the sale of the above property, is now pending before the commissioner of Bhaugulpore, we, therefore, with our esteem and consent, constitute Amanee Lal as mokhtar in our behalf. We accordingly declare that whatever the said mokhtar says or does in the above case, to that we consent and agree. We will make neither excuse nor artifice therein. Given under our hands, &c. Now the above is the customary power, which a party delegates to a mokhtar in cases before the authorities; and it is written on an 8 annas stamp paper. Moreover, it is the act not of one individual but of two. To allow, therefore, the conveyance of the real property of one of the subscribing parties upon such a power, must, in my opinion, be pronounced illegal. The precedent of the Sudder Court filed by respondent, rules that a client, who had bound himself to abide by the acts of his vakeel in a particular case, could not be released from his engagement; but in the present instance the act of the mokhtar goes far beyond attending to the interests of his clients in the case before the commissioner. The sale of the property was upheld by that functionary; here the power granted to Amanee Lal ceased and determined. When the matter again came into the hand of the collector, a special power drawn out by appellant alone, was necessary to render valid such a conveyance. Ordered, that the appeal be decreed, and the decision of the principal sudder ameen reversed, with all costs chargeable to respondent.

From this decision a special appeal was preferred to the Sudder Dewanny Adawlut; and on the 28th March 1848, the case was remanded for further investigation with the following observations: "The judge appears to have mistaken, the real point at issue, viz. whether the sale to the plaintiff was effected or not. This did not rest solely upon the authority of the mokhtar, to give in the petition alluded to; but upon the general evidence to the transaction. The mokhtarnamah and petition are part of the evidence, but they are not to be substituted for the deed of sale. Admitting that the mokhtarnamah should be rejected altogether, the rest of the plaintiff's evidence should be considered; and if he can prove the sale, he is entitled to a decree in his favor, independently of the question of admissibility or otherwise of the power given to the agent of the defendant."

The usual notices were issued for the attendance of the parties, and the case again came before this court. The vakeel of respondent (appellant before the Sudder Court) was first called upon to state whether any deed of sale had been effected. He replied that his client had no deed of sale to produce. He was then directed to suggest the reading of any papers or documents in support of the sale. The mokhtarnamah given to Amanee Lall, a note written by one Ram Purshaud to Hurdyal Singh and called a receipt of the purchase money, and the evidence of the witnesses were referred to and read. The vakeel of the appellant was heard in reply.

JUDGMENT.

The respondent (plaintiff) has no bill of sale to produce, but rests his claim on the strength of the evidence, oral and documentary, which he has brought forward to shew that, notwithstanding the absence of any deed, a *bonâ fide* sale did occur. Now in the absence of a bill of sale it is very necessary that the fact of the sale should be satisfactorily established. In the present instance the evidence of respondent's (plaintiff's) witnesses to the transaction, and his own account of it, materially differ. The former, especially the evidence of Amanee Lall, mokhtar, who has figured throughout the whole transaction, goes to shew that the parties now before the court and Debee Purshaud Singh purchased the property jointly at the public sale, paid the money jointly into the treasury, and jointly acquired possession. The receipt of the collector for the purchase money shews at a glance that two parties only paid the money into his treasury, viz. Bencee Purshaud Singh, on the part of Debee Purshaud, and Thakoor Singh in person; besides respondent has no where in his plaint pretended that the acquisition of the property was a joint one at the public sale, but a subsequent and distinct transaction effected solely with the appellant, Thakoor Singh. Respondent therefore has failed to prove the fact of the sale by the evidence of witnesses. The last point on which the respondent's case may be said to rest is the receipt of the purchase money, and the documentary proof on this head is a rookka, or note, from one Ram Purshaud Singh to the address of Hurdyal Singh, informing him that he had received rupees 950, and had transferred it to the banking house of Meetun Lall, on account of Thakoor Singh: this would have been so far satisfactory evidence, had it been followed up by shewing that Ram Purshaud Singh had received distinct instructions from the appellant to receive the above amount from Hurdyal Singh on account of the sale, and that Ram Purshaud did actually receive the amount stated, and lodged it with the banker on Thakoor Singh's account: but respondent has not shewn this. Lastly, in the absence of a bill of sale, and considering the contradictory accounts of the alleged sale as stated by respondent in

his plaint, and that furnished by the evidence of his witnesses, the proof adduced by the claimant appears to me insufficient, and I see no grounds for altering my former judgment. Ordered, that the appeal be decreed, and that the decision of the principal sudder ameen be reversed, with all costs to be paid by respondent.

THE 22D JULY 1848.

Case No. 276 of 1847.

Appeal from the decision of Moulvee Furhut Alee, Moonsiff of Soorujgurrah.

Bohore Sahoo, (Plaintiff,) Appellant,

versus

Dookun Sahoo, (Defendant,) Respondent.

*Abdoolla Khan and Girdharree Lal, Vakeels of Appellant.
Zukeooddeen and Iltaf Hosein, Vakeels of Respondent.*

CLAIM, on an instalment bond: instituted 29th July 1847, decided 23rd November 1847.

Plaintiff brought the present action to recover from the defendant 49 rupees, 9 annas, 7 pie, 4 cowrees, on an instalment bond bearing date the 3d Cheyte 1253 F. S., by the provisions of which defendant acknowledged himself to be indebted to the plaintiff, on account of former transactions, to the amount of 45 rupees, which sum he covenanted to repay in five instalments, at the rate of nine rupees per each instalment, to be paid in each successive year, commencing from the year 1253 F. S., until the sum due on the bond should be fully satisfied.

Defendant, in his answer, denies the transaction, and attributes the suit to enmity, arising from his having lodged a complaint at the thanna against the plaintiff for seizing cloth belonging to him, defendant.

The moonsiff dismissed the claim—the bond, in his opinion, having been extorted from defendant without sufficient consideration.

From this decision an appeal was preferred by plaintiff on general grounds, and summons was issued for respondent to attend.

JUDGMENT.

The decision of the moonsiff cannot, in my opinion, be upheld by this court, because the plea of extortion, on which he has founded his decision, has no where been pleaded by the respondent. One witness to the bond certainly states that the respondent did not sign very willingly, but this is not sufficient to invalidate the whole transaction. Besides, had the bond been extorted, respondent, it is only reasonable to suppose, would have preferred a complaint on

the subject before the criminal court. Respondent, however, denies the transaction altogether, and by this defence he must stand or fall. The execution of the bond has been fully proved, and the evidence shews that it was given in consideration of a balance of a former account. Under these circumstances, ordered, that the appeal be decreed, and the decision of the moonsiff be reversed, and that respondent do at present make good the two instalments due at the time of bringing this action, viz. those for 1253 F. S. and 1254 F. S., with interest thereon from the period of their falling due, and that respondent do hereafter, at the regular dates fixed in the instalment bond, satisfy the amount remaining due on the said bond, that is to say, 27 rupees, and interest thereon from the date on which the said instalments may fall due but remain unpaid.

THE 27TH JULY 1848.

Case No. 256 of 1847.

Appeal from the decision of Moulvee Amjud Allee, Acting Moonsiff of Bhaugulpore.

Sheik Niamutoollah and Musst. Raheemun, (Defendants,) Appellants,

versus

Musst. Pulassoo, widow of Meah Jan deceased, and guardian of Saheb Jan, minor, (Plaintiff,) Respondent.

Abdoolah Khan, Vakeel of Appellants.

Altaff Hossein, Vakeel of Respondent.

THE plaintiff sets forth that Sheik Lochun, Niamutoollah, Rehemat, and Meah Jan were four brothers. In 1241 F. S. they separated and divided property. Lochun and the husband of plaintiff joined stock together. In Sawun 1248, however, they separated, and plaintiff's husband commenced cultivating on his own account: for this purpose he provided himself with two pair of bullocks and two carts, and other implements of husbandry. In Pous 1251, plaintiff's husband died, leaving Saheb Jan an infant him surviving, and of whom plaintiff became guardian. Plaintiff was at her father's house on a visit when her husband died, and all his movable property was taken possession of by the defendants, who refused to resign it to plaintiff. She therefore sues for its restoration, valuing the same at Sicca rupees 60, or Company's rupees 64.

Musst. Raheemun states, in her answer, that the property in question belongs to her. The defendant Niamutoollah has no interest in the matter. Defendant is the sister of plaintiff's late husband, and is married. Plaintiff, after the decease of her husband, carried away all her husband's property in the presence of a punchait.

Niamutoollah answers to the same effect as Musst. Raheemun.

The moonsiff, on the evidence adduced by the plaintiff, decreed 10 rupees the value of a bullock that had died, and the restoration of three other bullocks, and two carts, and 16 ghutteas (for loading bullocks) and one paklee, (a net for holding bhosah); if not restored the amount claimed in the plaint, viz. Company's rupees 64, to be paid to plaintiff by the defendants, with costs of this action, and interest thereon from date of decision to date of payment.

From this decision an appeal was preferred by the defendants on general grounds, and a summons was issued on the respondent.

JUDGMENT.

The evidence adduced by respondent proves that the property remained in appellants' hands; and Musst. Raheemun states in her answer that plaintiff carried away all her husband's property after his decease in the presence of a punchait. This point, however, she has entirely failed in substantiating, and I therefore see no grounds for interfering with the decision of the lower court, which is accordingly confirmed, with costs, to be paid by appellants.

THE 27TH JULY 1848.

Case No. 203 of 1847.

Appeal from the decision of Gunga Gobind Surbadhikaree, former Moonsiff of Kishengunge.

Nundoo Komar Misser, (Plaintiff,) Appellant,

versus

Baligram Pattuk, and on his decease, Gopal Puttuk, for self and guardian of Bodee Pattuk, minor, (Defendant,) Respondent.

Girdharree Lall, Vakeel of Appellant,

Ashrut Allee, Vakeel of Respondents.

CLAIM, debt on note of hand: instituted 8th March 1847, decided 13th July 1847.

Plaintiff sued the defendant on a note of hand, bearing date the 14th Bhadoon 1253 F. S. Defendant received Sicca rupees 85 in advance, and covenanted to supply the plaintiff with grain, called dhan, at the rate of two maunds per rupee. Defendant had failed in his contract, consequently plaintiff brought this action for the recovery of the 85 Sicca rupees-principal, and 35 rupees, 6 annas, 10 pie being the amount of loss sustained, at the then market price of the grain, by the non-fulfilment of the contract.

The defendant, in his answer, denies the transaction. On the date of the alleged note of hand, his son Sham Pattuk died. At such a season it was not probable that he, defendant, could be

entering into a contract to supply grain; moreover his son, Sham Pattuk, had dealings with plaintiff, and on his demise, plaintiff called on him, defendant, to pay his son's debt, which he refused.

The moonsiff dismissed the claim, on the grounds of discrepancies in the evidence of the witnesses to the transaction, and on the improbability of the defendant making such a contract on the very day of his son's death—the fact of the death of Sham Pattuk on the 14th Bhadoon 1253, being established by evidence and local enquiry. It was further shewn in evidence that plaintiff, after Sham Pattuk's demise, made a demand on defendant to pay his son's debt, which defendant refused to do, and then plaintiff commenced the present action.

From this decision plaintiff preferred an appeal on general grounds, and a summons was issued on respondent; and on notice of his decease, his heir, the present respondent, was allowed to defend the appeal.

JUDGMENT.

After a careful perusal of the whole of the papers, and evidence in this case, and taking into consideration the advantage enjoyed by the lower court of personally examining the witnesses, I see no just grounds for interfering with the decision now appealed from, and which is accordingly confirmed, with costs to the appellant.

THE 31st JULY 1848.

Case No. 5 of 1848.

Appeal from the decision of Moulvee Mahomed Haneef, first grade Moonsiff of Bhaugulpore.

Neeladhur Shookul (Defendant,) Appellant,

versus

Chand Khan, (Plaintiff,) Respondent.

Abdoolah Khan, Vakeel of Appellant.

Moonshee Zukeeqodeen Ahmed, Vakeel of Respondent.

CLAIM on bond: instituted 25th August 1847, decided 31st December 1847.

This action was commenced by plaintiff to recover from the defendant Company's rupees 46-10-7, principal and interest, on a bond bearing date the 28th Bysak 1248 F. S.

The defendant, in his answer, denies the transaction, and urges as a plea against the validity of the bond that his signature is written in the Hinddee character, whereas he always signs his name in that of the Deb Nagree.

The moonsiff, considering the transaction fully proved, decreed the amount claimed, in plaintiff's favor.

From this decision an appeal has been preferred by the defendant, who urges, among other grounds, that the whole of the witnessses to the execution of the instrument were not examined in the lower court.

JUDGMENT.

It appears from the record that the witnesses whose attendance respondent was able to procure, were examined, and no objection on the point now urged was made in the lower court. The signature of appellant was attached to the instrument by his own brother, who engrossed the bond; and I can therefore see no grounds for interfering with the decision of the moonsiff, which is hereby confirmed, with costs to be paid by appellant.

THE 31ST JULY 1848.

Case No. 253 of 1847.

Appeal from the decision of Moulvee Amjud Ally, Acting Moonsiff of Bhaugulpore.

Chand Khan, (Plaintiff,) Appellant,

versus

Gungadhur Shookul, (Defendant,) Respondent.

Moonshee Zukceooddeen Ahmed, Vakeel of Appellant.

Abdoollah Khan, Vakeel of Respondent.

CLAIM on bond: instituted 29th June 1847, decided 30th September 1847.

The plaintiff brought this action to recover from the defendant Company's rupees 20, 5 annas, on a bond bearing date the 28th Bysack 1248 F. S.

The defendant admits the execution of the bond, but pleads that plaintiff acted in contravention to Sections 8 and 9, Regulation XV. of 1793.

The moonsiff, on the evidence of two of the witnesses to the bond, who depose that the transaction was not for ready money, but on account of grain, and that illegal interest was stipulated for, proceeded to dismiss the claim.

From this decision an appeal was preferred on general grounds, and a summons was issued on respondent to attend.

JUDGMENT.

The execution of the bond is admitted, but respondent states that he received from appellant 5 rupees in cash only, for which appellant took from him a bond for 6 rupees, 14 annas. Appellant

subsequently sold him some grain, by which he raised the debt to 8 rupees. Appellant then drew out a fresh bond, raising the amount due to rupees 11. These are the principal objections urged by respondent in his answer, and two of the witnesses to the execution of the instrument depose in their evidence very minutely to these details. Appellant, on the other hand, and the remaining witnesses to the bond, declare that the transaction was a simple loan; that the money, viz. Sicca rupees 11, was made over to the respondent; and that the legal interest alone was stipulated to be received. In a case with the evidence so conflicting, the question is whether the evidence adduced by the respondent is sufficient to bring this claim within the prohibitory Clause of Section 9, Regulation XV. of 1793. In my opinion it is not; because that section is applicable to loans of money only, (vide Construction No. 487,) but by the respondent's shewing the bond under dispute was given on account of a former balance, and not for a money loan. Moreover, the facts recited in the bond itself coincide with the plaint and the general evidence. Ordered, that the appeal be decreed, and the decision of the moonsiff reversed, with costs to be paid by respondent.

THE 31ST JULY 1848.

Case No. 6 of 1848.

*Appeal from the decision of Moulvee Mahomed Haneef, first grade
Moonsiff of Bhaugulpore.*

Neeladhur Shookul, (Defendant,) Appellant,

versus

Chand Khan, (Plaintiff,) Respondent.

CLAIM on bond: instituted 25th August 1847, decided 31st December 1847.

This suit was commenced by plaintiff to recover Company's rupees 13-1, on a bond bearing date 28th Bysack 1248 F. S. For the reasons given in appeal case No. 5 of 1848, the present transaction having occurred on the same date between the same parties, and witnessed by the same individuals, ordered, that the appeal be dismissed, and the decision of the moonsiff confirmed, with costs.

ZILLAH EAST BURDWAN.

PRESENT: W. LUKE, Esq., OFFICIATING JUDGE.

THE 3D JULY 1848.

No. 2.

Appeal from a decision of the Officiating Sudder Ameen, Nazeeroodeen Mahomed, dated 18th April 1848.

Choonee Beebec and others, (Defendants,) Appellants,

versus

Bishen Koomaree and others, (Plaintiffs,) Respondents.

THIS is a suit to recover possession of intestate property, and to set aside a summary award of the civil court. Suit laid at rupees 649-6-5.

The plaintiffs state that Rampersaud Dass Mohunt came in the year 1215 B. S. to settle at Burdwan, accompanied by his mother and sister Pecaree Beebee. That he rented a piece of ground and a tank from Mirza Dillower Beg, *khadim*, or manager, of the wukf Peer Bahram. That on a part of the said ground he erected a dwelling house in which he, his mother, and his sister resided. That the said Rampersaud subsequently married three wives (plaintiffs,) who likewise resided with him. In 1239 Rampersaud died, his mother having also previously died, leaving the said Pecaree in possession of the property, together with the plaintiffs, one of whom always, and the others occasionally, lived with Pecaree. In the month of Bhadun 1253 B. S. Pecaree also died; the plaintiff, Bishen Koomaree, performed the funeral rites, as heir of the deceased. Pecaree's property was, however, attached by the court, and subsequently made over to the defendant, Choonee, to the prejudice of the plaintiffs, who, as heirs of the deceased, now sue to recover.

The defendants deny that Rampersaud had any interest in the property of the deceased, Pecaree Beebee, or that he, or the plain-

tiffs, ever resided with her, and state that the said Peearee gained her livelihood by prostitution, and acquired the property in dispute by the wages of it. They further state that the defendant, Choonee, was brought up, clothed, and fed by Peearee, and was regarded as her heir and adopted daughter.

The officiating sudder ameen considers it proved on the part of the plaintiffs, that the property of the deceased Peearee was acquired jointly by her and Rampersaud, and that the plaintiffs, as the widows of the latter, are legally entitled to a moiety of it, and the state to the other half. In the absence, however, of any claim in behalf of the latter, he decrees the whole to the plaintiffs. Rampersaud's title to any share in Peearee Beebee's estate, is grounded on the pottahs said to have been granted by the mutowolec of the wukf land on the 11th Falgoon 1215 B. S., the testimony of the witnesses, and the bywusta of the pundit, given by desire of the court of first instance. The pottahs bear all the appearance of forgeries; they are written on old paper, and though dated 11th Falgoon 1215, forty-five years ago, the ink is perfectly fresh; neither the extent nor position of the land leased is specified; they all bear the same date, (a circumstance which adds to the improbability that three pottahs, instead of one, should have been granted,) and they are not verified in any way whatever. The testimony of the witnesses that Rampersaud lived with his sister in his life time, and that his widows, the plaintiffs, also resided with Peearee to the date of her decease, is unworthy of credit, as the plaintiffs distinctly state in their plaint that their husband, Rampersaud, was a mohunt and a byragee, and performed all religious ceremonies according to the shasters; if he held the property in dispute in joint tenancy with the deceased, who is avowed by all parties to have been a prostitute, and consequently excluded from Hindooism, he must have forfeited his caste and all the privileges attached to it. The plaintiffs' assertions, in regard to one fact or the other, must therefore be untrue and unworthy of belief. The sudder ameen has also lost sight of a most important feature in this case, that on the decease of Peearee Beebee the plaintiffs laid claim in the first instance to her estate as *her* heirs, though the present suit is preferred as heirs of Rampersaud; and they are unable to reconcile the discrepancy. Under all these circumstances recorded in the missil, I cannot arrive at the same conclusions as the lower court. I am of opinion that the intestate property was acquired by, and exclusively belonged to Peearee Beebee, and that Choonee Beebee, as the adopted heir and daughter of the deceased, has the best title to succeed to it. Under any circumstances the award of the sudder ameen was improper and cannot be upheld, opposed as it is to his own recorded opinion that the state is entitled to a moiety of the property. Ordered, therefore, that the appeal be decreed, with costs, and the decision of the officiating sudder ameen reversed.

THE 13TH JULY 1848.

No. 111.

*Appeal from a decision of the Moonsiff of Cutwa, Ilahee Buksh,
dated 14th March 1848.*

Unath Bundoo, (Defendant,) Appellant,
versus

Radhagovind Udhikarry, (Plaintiff,) Respondent.

THE plaintiff sues to recover a bond debt with interest, bond bearing date 3d Asin 1253 B. S. The defendant denies the debt. The moonsiff, in the absence of all proof to the contrary, deems the bond a valid document, and decrees for the plaintiff.

The appellant urges no other grounds for setting aside the decision than those very properly overruled by the moonsiff, viz. as to incredibility of the witnesses attesting the bond, and the informality of the registration by the kazeer; and I therefore see no reason to disturb the decision of the lower court, which is hereby affirmed, and the appeal dismissed without serving a notice on respondent.

THE 13TH JULY 1848.

No. 112.

*Appeal from a decision of the Moonsiff of Samuntee, Sreekunt
Singh, dated 8th March 1848.*

Chundee Churn Singh Roy, (Plaintiff,) Appellant,
versus

Kalee Churn Goopt and others, (Defendants,) Respondents.

THIS suit is brought to recover arrears of rent, with interest, from 1250 to 1252 B. S., amounting to rupees 139-11.

The plaintiff states that the defendants are liable, in the name of their common ancestor, Ram Mohun Goopt, for Company's rupees 44-13 annually; that in failure of payment for the years above specified he now seeks to recover. The defendants reply that they hold their lease in perpetuity at an annual rent of Sicca rupees 27-10-14, at which rate they have paid and hold plaintiff's receipts for the same.

The moonsiff dismisses the case. The defendants, in support of their right to cultivate at the rate stated by them, produce a copy of a decree passed in 1834, in which the extent of their liabilities is defined, viz. to be Sicca rupees 27-10-14, and in proof of their having paid rent at this rate in the years sued for, file receipts signed by the plaintiff's gomasta and verified by witnesses. To nullify their evidence the plaintiff files a decree passed by the collector in a summary suit, in favor of plaintiff, on 30th October 1843, in which the defaulter's jumma is represented to be rupees

44-13. This decision, however, was given *ex parte*, on an ikrar-nama of the defendant, (which document, however, the plaintiff declines producing,) and the testimony of the gomasta, which is at variance with that given in the present case, and is unworthy of credit. It is also highly improbable that the defendants should have been permitted to remain two years in possession of their land without paying any rent, as plaintiff asserts is the case; more particularly as he lost no time, after obtaining possession of the estate, in summarily suing the defendants for their rent on account of 1249. I see no reason whatever to interfere with the decision of the lower court, which is hereby affirmed, and the appeal dismissed without serving a notice on the respondents.

THE 13TH JULY 1848.

No. 113.

Appeal from a decision of the Moonsiff of Samunttee, Sreekunt Sing, dated 8th March 1848.

Chundee Churn Singh Roy, (Plaintiff,) Appellant,

versus

Kalce Churn Goopt and others, (Defendants,) Respondents.

THE parties in this case are the same as those concerned in No. 112, and the cause of action is similar, with this difference that the rent sued for is on account of the year 1252 B. S. The plaintiff appeals from the award of the lower court in regard to the extent jumma for which defendants are liable. This point has been disposed of in case No. 112, and the decision in the present instance will follow that in No. 112. The appeal is accordingly dismissed without serving a notice on the respondents, and the moonsiff's award affirmed.

THE 18TH JULY 1848.

No. 168.

Appeal from a decision of the Moonsiff of Culna, Khoda Buksh, dated 8th April 1848.

Deeno Nath Mitter, (third party,) Appellant,

versus

Kasseenath Jogee and others, (Plaintiffs,) Respondents.

THIS is a suit to recover rent of a tank for 1253 and part of the year 1254 B. S. Suit laid at rupees 7, 12 annas.

The plaintiffs state that in 1252 B. S., 11th of Falgoon, they purchased from Oodyto Churn Dullal sundry property, consisting of a dwelling house, lands, &c., in which the tank aforesaid was included; that the defendant, Deb Koomaree, leased the latter at an annual rent of 10 rupees on the 15th Jeit 1253, and in failure of her paying the same the plaintiffs seek to recover. The said Deb Koomaree confesses judgment.

The moonsiff decrees for the plaintiffs, grounding his decision on a summary award passed by him in a claim case No. 59, preferred in an execution decree suit No. 166, in which the appellant is the decreedar. In neither of the cases adverted to, which appear to have been disposed of on the same day, viz. 8th April 1848, has the moonsiff inquired into its merits; and it is therefore difficult to understand why he should ground his decision of the regular suit, on that of the summary suit, and *vice versa*, without having done so. In the summary suit the moonsiff is of opinion that the fact of possession of the plaintiffs is established by the deed of transfer executed in their favor by Oodyto Churn; but he makes no investigation as to the validity of that document, which, in justice to the appellant, he was bound to do. It appears that the deed of transfer executed by Oodyto Churn in favor of plaintiffs, though dated 11th Falgoon 1252, was not registered till 14th June 1847, corresponding with 1st Asar 1254 B. S., or five days subsequent to that on which the appellant (decreedar) applied to the court for the sale of the said Oodyto Churn's property, which excites suspicion that the deed of transfer was not in existence till the attachment of Oodyto's property had been solicited. It is also evident from the records of the case that the said Oodyto Churn is still in possession of the house, a part of the property alienated, though he states he holds it merely as a tenant; but he fails to prove this satisfactorily, or that any other portion of his estate is in the hands of the purchasers. On the contrary the appellant establishes, by documents filed, that subsequent to the date of the kuballa, viz. on 1st Jeit 1254, the said Oodyto Churn sued summarily in the collector's court, in his own name, for arrears of rent accruing on the property included in the deed of sale, produced by plaintiffs. I am of opinion, therefore, that both the kuballa and the suit now under review, have originated in a fraudulent attempt of Oodyto Churn, in collusion with the plaintiffs, to alienate the property of the former in order to prevent the execution of appellant's decree; and for this reason I decree the appeal with costs, and set aside the decision of the lower court.

THE 18TH JULY 1848.

No. 169.

*Appeal from a decision of the Moonsiff of Culna, Khoda Buksh,
dated 8th April 1848.*

Deenonath Mitter, (third party,) Appellant,

versus

Kasseenath Jogee and others, (Plaintiffs,) Respondents.

THIS is a suit to recover house rent from Chyte 1252 to Sawun 1254 B. S. Suit laid at 25 rupees.

The defendant confesses judgment. The circumstances attending this case are precisely similar to those recorded in case No. 168, and need not be here recapitulated. For the reasons therein assigned, the appeal is decreed with costs, and the decision of the moonsiff set aside.

THE 19TH JULY 1848.

No. 7.

*Appeal from a decision of the Principal Sudder Ameen, Moulvee
Fuzzul Rubbee, dated 15th March 1848.*

Maharaja Mehtaub Chunder, Buhadoor, (Plaintiff,) Appellant,

versus

Basirooddeen Chowdree, heir of Mahomed Akram, and Syudoon-
nissa Beebee, (Defendants,) Respondents.

THIS is a suit to recover possession of mouzah Beldanga, with mesne profits. Suit laid at rupees 4,643-7-7.

The appeal is preferred, not with reference to the merits of the case, but on a point of law, whether the suit under the statute of limitations is or is not cognizable. It appears that from 1223 to 1226 B. S., one Hushmut Ali held a putnee lease from the plaintiff of lot Nikoonjpore, in which the lands of mouzah Beldanga were comprised. In the year 1225, (1819,) the defendant's ancestor, Akram Chowdree, instituted a suit against Hushmut Ali for 64 beegahs, 15 cottahs of land, as part and parcel of his estate, mehal Sopsur, which it was asserted he, Hushmut Ali, had usurped, and obtained a decree for the same, which was duly executed. In 1240 B. S. one Amanut Ali took a putnee lease of the same lot, formerly held by Hushmut Ali, at a rental of rupees 1541-2 annually; in failure of his obtaining possession of mehal Beldanga, a portion of his lease, he sued, in 1835, the

aforesaid Akram Chowdree and the plaintiff's predecessor, Rancee Kumul Koomarce, in the moonsiff's court, and obtained a decree; which was modified at the plaintiff Amanut Ali's request to a deduction of rupees 129-14-10 annually from his jumma—the moonsiff giving the aforesaid Maharanee the option of suing for possession in a separate suit, in virtue of which the plaintiff has instituted the present case.

The principal sudder ameen is of opinion that the cause of action arose in 1819, when Akram Chowdree sued Hushmut Ali; and that as the said Hushmut was the putneedar, and consequently the representative of the grantor of his lease, the present plaintiff's predecessor must have consequently been aware of the existence of the suit, and that it was not requisite otherwise to make him a party to it; and that the plea of defendant, of the statute of limitations, is fatal to plaintiff's claim. In this decision I cannot concur. The rights of the malik in mouzah Beldanga are totally distinct from those of the putneedar, and cannot be alienated without his being a party in the transaction; and it is by no means a *sequitur* that, because Hushmut Ali was the plaintiff's putneedar, the latter was necessarily aware of the suit that had been filed by Akram Chowdree. It was incumbent on Akram Chowdree to have made the zemindar as well as Hushmut Ali a party to the suit; and his decree against the latter cannot, under the circumstances, prejudice the rights of the zemindar, as it might have been and was no doubt obtained by the fraud and collusion of the parties concerned. The Construction of the Sudder Court, No. 744, is clearly applicable in this case, and the plea of statute of limitations invalid. The appeal is accordingly decreed, and the decision of the lower court reversed, and the case remanded to be investigated on its merits.

THE 19TH JULY 1848.

No. 9.

Appeal from a decision of the Principal Sudder Ameen, Moulvee Fuzzul Rubbee, dated 11th May 1848.

Sreemuttee Goluck Monee Dassce and others, (Defendants,)
Appellants,

versus

Kasseenath Chunder, (Plaintiff,) Respondent.

THE plaintiff sues to recover possession of a tank and mesne profits, and to reverse an order made by the magistrate under Act IV. of 1840. The plaintiff states that the aforesaid tank forms part and portion of his zemindaree, of which the defendants, aided by the authorities, have dispossessed him. Some of the defendants, in reply, state that the tank is lakhiraj, and formerly belonged to one

Beeopro Churn, who bequeathed it to them. Others admit the tank to be mal property.

The defendants fail, however, to produce a particle of evidence to prove the tank to be lakhiraj, or their right of holding. On the other hand, it is established by plaintiff that the tank is part of Ghose Hât, which pertains to his mâl estate. I therefore see no grounds for disturbing the decision of the lower court, which is hereby affirmed, and the appeal dismissed without summoning the respondent.

THE 20TH JULY 1848.

No. 92.

Appeal from a decision of the Moonsiff of Suleemabad, Gunga Churn Shome, dated 26th February 1848.

Roop Chand Sircar, (third party,) Appellant,
versus

Kishen Kishub Ghose and others, (Plaintiffs,) Respondents.

THE plaintiff sues for possession for 3 annas, 14 gundas, 2 cowrees, in a tank. Suit laid at rupees 6-11.

The plaintiff states that the defendants, Neel Madub Ghose and Rada Monee Dasee, granted him a lease in perpetuity of the afore-said interests in a tank, bearing date the 2d of Bysak 1254 B. S. On the 3d Srabun following, the defendants resisted plaintiff's possession, which he now seeks to recover. The defendant, Neel Madub, denies having granted a mokurreree lease to the plaintiff. That, on the 7th of Bysak 1254, he and Dhun Kishen, a co-partner, granted a lease of their and Rada Monee's interests in the tank to Roop Chand (the appellant) for seven years. The defendant Rada Monee, and Dhun Kishen (a third party,) confirm the plaintiff's statement as to the mokurreree. The defendant, Neel Madub, in his deposition before the moonsiff, in contradiction of his reply, states that he did grant a mokurreree lease, and further that he wrote both the pottahs—that of the 2d Bysak in favor of plaintiff, and that of the 7th Bysak 1254, in favor of appellant; that he wrote the latter when he was under the influence of some intoxicating drug and not in his right senses. His word cannot be relied on, and the decision of the case must rest on other evidence. The defendant, Rada Monee, admits having granted the lease and received the value of it; and both she and Neel Madub agree in saying they were appropriated to the service of the idol. The fact of the pottah being given to plaintiff on the 2d Bysak 1254, and his taking possession of the tank, and his subsequent dispossession by defendant Neel Madub, is proved by the evidence of witnesses, which the appellant fails to invalidate. I therefore see no reason to interfere with the decision of the lower court, and it is hereby affirmed, and the appeal dismissed with costs.

THE 20TH JULY 1848.

No. 96.

Appeal from a decision of the Moonsiff of Samuntlee, Sreekunt Singh, dated 6th March 1848.

Roop Churn Roy and others, (Defendants,) Appellants,
versus

Shew Pershad Chattoorjee and others, (Plaintiffs,) Respondents.

THIS is a suit to recover compensation for loss sustained in the produce of four beegahs of land. Suit laid at Company's rupees 118-9.

The plaintiff states he holds possession of 22 beegahs of land in the village of Korunda. That in 1248 B. S. the defendants forcibly cut and carried off the crops of four beegahs of the said land, and prevented the plaintiffs' cultivating them in 1249 B. S., and he now sues to recover the loss sustained thereby. The defendants deny plaintiffs' right to the land, and enter into a detailed statement of the circumstances of plaintiffs' connection with it, and proceed to explain that the land belonged to one Rugoomonee, and how they, the defendants, acquired an interest in the property.

The moonsiff decrees for the plaintiff to the extent of 56 rupees and costs. The appellants, in their petition of appeal, make no allusion to the grounds on which the moonsiff has made his award (who has very properly confined his judgment to the point at issue, viz. the loss plaintiffs have sustained by the acts of the defendants,) but enter into a great deal of irrelevant matter as to their right in the land, a question not before the court. On a review of the proceedings, I see no reason whatever to interfere with the decision of the lower court, which is hereby affirmed, and the appeal dismissed with costs.

THE 21ST JULY 1848.

No. 94.

Appeal from a decision of the Moonsiff of Culna, Moonshee Khoda Buksh, dated 21st February 1848.

Anund Moe Dassee, (Plaintiff,) Appellant,
versus

Madub Chunder Dutt and others, (Defendants,) Respondents.

THIS is a suit to reverse a sale made in satisfaction of a decree, and to recover possession and value of certain property. Suit laid at rupees 125-8.

The plaintiff states that her husband, Bhyrub Chunder Nundee, and Bykoontnath Nundee and Nilmonce Nundee held in joint tenancy certain property, consisting of a share in a tank, lands, bricks,

&c. ; that her husband died in 1248, and in the year 1846, December, the defendant, Madub Chunder, having previously served an attachment on the property of Nilmonce, against whom he had obtained a decree, caused her interests, as well as those of the said Nilmonce, to be sold in the aforesaid property, which she now sues to recover. The defendant, Madub Chunder Dutt, in reply, states that the decree was sued out in the usual manner, and that the property belonged to Nilmonce. The other defendants reply to the same effect. The moonsiff dismisses the case on failure of plaintiff proving her right in the property sold.

The defendant does not deny that the property sold is hereditary, nor the plaintiff's title, as the widow of Nilmonce's brother. The point for consideration is, whether the plaintiff has, through the instrumentality of the defendants, been deprived of her rights in that property. The witnesses depose to the plaintiff's rights and interests and possession, in joint tenancy with Nilmonce, of the building materials and the tauk, to the attachment and subsequent sale of the same at the instance of the defendant, Madub Chunder; and I see no grounds to question their testimony. The whole proceedings of the decreedar, Madub Chunder, and the sale purchasers, the other defendants, appear from the record of the case to have been based in collusion and fraud. There can be no doubt that the defendants have usurped the rights and interests of the plaintiff under the false plea of their belonging exclusively to Nilmonce. The appeal is accordingly decreed, with costs, and the decision of the lower court reversed.

THE 24TH JULY 1848.

No. 8.

Appeal from a decision of the Principal Sudder Ameen, Moulvce Fuzzul Rubbee, dated 30th March 1848.

Shah Bunda Alee, (Defendant,) Appellant,

versus

Goolam Kullunder, (Plaintiff,) Respondent.

THE plaintiff sues for possession of 4½ beegahs of lakhiraj land, with mesne profits from 1244 to 1252 B. S. He states that his father purchased 2 beegahs, 13 cottahs of the disputed land from one Bahur Khan in 1206 B. S.; that the remainder 1 beegah, 17 cottahs is hereditary property; and that in the year 1244 B. S., the defendant forcibly dispossessed him; he now seeks to recover. The defendant replies that the disputed land is part and parcel of his ayma estate, Bonpara; that Bahur Khan was formerly his servant and held the said lands in lieu of services rendered; that in the year 1244, his, Bahur Khan's, son, Sheik Noem, resigned his, defendant's, service, and he took possession of the land.

The principal sudder ameen is of opinion that the plaintiff has established his right, and decrees accordingly.

The plaintiff in this case must prove two points; first, that the land in dispute is lakhiraj; and secondly, his right of possession. In support of the former his only evidence is a copy of the taidad register of 1209 B. S., which, unsupported by a sunnud, or a char, or other document of a like nature, is insufficient. In proof of the latter plaintiff files a kuballa, or deed of transfer, executed by Bahur Khan. It is therein stated, however, that the land alienated is in the village of Puddompoor Nowgong, no allusion whatever being made to Bonpara, in contradiction to what the plaintiff asserts and the taidad records, viz. that the land is in Bonpara. The principal sudder ameen gets over this difficulty by saying it is evidently a mistake of the writer who drew out the deed, who substituted one name for the other,—an inference, without some reason, he was not warranted in drawing. The deed of sale, as evidence of the plaintiff's claim, is worthless in my opinion, and must be rejected. Under these circumstances the appeal is decreed with costs, and the decision of the lower court reversed.

THE 24TH JULY 1848.

No. 368.

*Appeal from a decision of the Moonsiff of Burdwan, Mr. J. Bell,
dated 16th November 1846.*

Putect Pabun Banoorjeea and others, (Defendants,) Appellants,

versus

Radha Mohun Gossain and others, (Plaintiffs,) Respondents.

THIS was a suit to recover rent due on a babuk mehal from 1243 to 1247 B. S., and remanded on special appeal, "in order that the judge should, under the Circular Order, No. 216 of the 27th October 1837, and Construction No. 1147, give the holders of the document proper time to have it duly stamped, instead of deciding upon it in its present imperfect state." The plaintiffs having adopted the necessary course in regard to the kufbooleent, by having the proper stamp affixed, the only proceeding now requisite is to reiterate the order given in the case by my predecessor on 30th March 1847. The parties preferring the special appeal argue that the case is open to a re-trial; but as the order remanding the case specially restricts the inquiry to a particular point, the argument is overruled.

The appeal is therefore dismissed, and the moonsiff's decision affirmed.

THE 25TH JULY 1848.

No. 115.

*Appeal from a decision of the Moonsiff of Cutwa, Itlahee Buksh,
dated 14th March 1848.*

Nuffer Chunder Sadhoo, (Defendant,) Appellant,
versus

Gooroo Churn Nath, (Plaintiff,) Respondent.

THIS is a suit to recover a bond debt, bond bearing date 14th Kartik 1251 B. S. The defendant denies all knowledge of the transaction, asserting that at the date the bond bears he was at Burdwan.

The moonsiff, from the evidence of the attesting witnesses and the writer of it, and from the fact of the signature of the defendant on the vakalutnama and bond corresponding, and in the absence of all proof to the contrary, is of opinion that the bond is good and valid.

In appeal, the defendant impugns the conduct of the moonsiff, and says he declined summoning defendant's witnesses, though this wakeel filed a list of their names in the usual manner—because the case had been pending upwards of a year. From the records of the case it would appear that the appellant's vakeel was called on for proof on the 25th February, 8th and 14th March 1848, respectively; and in failure to produce it, the case was disposed of. Appellant's assertion, grounded, as it must be, on the mere verbal statement of the vakeel, is not worthy of credit. On a review of the proceedings, I see no reason to differ with the moonsiff as to the validity of the bond. His decision is therefore affirmed, and appeal dismissed without serving a notice on respondent.

THE 25TH JULY 1848.

No. 116.

*Appeal from a decision of the Moonsiff of Mahomedpore, Hamid-
ool-Huk, dated 10th March 1848.*

Neel Kumul Haldar and others, (Plaintiffs,) Appellants,
versus

Tripoorra Debeeca and others, (Defendants,) Respondents.

THE plaintiff sues to recover rupees 144-11-15, principal and interest, as per deed of instalment, dated 5th May 1243 B. S. He states that Digumberee Debeeca, the widow of Moochee Ram

Haldar, executed the aforesaid kistbundee in liquidation of certain sums due to plaintiff by her deceased husband. The defendant, Dripoo Moe, daughter of the said Digumberee, replies that the plaintiff, Harradun Haldar, is married to her sister, Tripooora Debeea's (also defendant) daughter; and that she, in collusion with the plaintiff, has fabricated the deed of instalment, in which sundry property is pledged as security, to defraud her sons, who are the legal heirs to it. Tripooora Debeea acknowledges the kistbundee.

The moonsiff rejects the evidence of the witnesses attesting the deed of instalment, as unworthy of credit; and, entertaining the strongest suspicion that the acknowledgment of the defendant, Tripooora, is a collusive act to deprive Dripoo Moe of her rights, gives judgment in favor of defendants. On a review of the proceedings I agree with the lower court in the conclusion it has drawn. The appeal is accordingly dismissed, and the moonsiff's decision affirmed, without serving a notice on the respondents.

THE 25TH JULY 1848.

No. 117.

Appeal from a decision of the Moonsiff of Samunttee, Sreekunt Singh, dated 27th March 1848.

Sumbhoo Nath Bose and others, (Defendants,) Appellants,

versus

Bungsee Buddun Bose and others, (Plaintiffs,) Respondents.

THE plaintiff sues to recover rupces 31-4, agreeably with a deed of instalment, bearing date 17th Bhadoon 1246 B. S.

The moonsiff's inquiry appears incomplete. The plaintiffs set out by stating that the deceased Kistanund Bose was in the habit of borrowing money from them; and that the deed of instalment was made for balance due after adjustment of accounts. The defendants deny that their brother ever had money transactions with the plaintiffs; and the latter should therefore have been called on to prove by accounts, or other documents, that there had been pecuniary transactions between them and the deceased defendant. The moonsiff was likewise required to summon defendant's witnesses; and his reasons for not doing so are not satisfactory. After hearing their evidence he could reject it, or otherwise, as he might deem proper. The appeal is therefore decreed, and the case remanded with a view to the moonsiff's proceeding with reference to the foregoing remarks. The costs of stamp incurred in preferring this appeal, to be refunded in the usual manner.

THE 26TH JULY 1848.

No. 118.

*Appeal from a decision of the Moonsiff of Burdwan, Mr. J. Bell,
dated 13th March 1848.*

Mudoosoodun Puramanick, (Plaintiff,) Appellant,

versus

Mudoosoodun Dey, (Defendant,) Respondent.

THIS is a suit to recover a book debt with interest, amounting to rupees 13-9-10. The defendant denies having ever had any transactions with the plaintiff (who is a shop keeper,) and states that this suit has originated in ill-will, which the plaintiff bears him for giving evidence in some suit pending in the civil court. The moonsiff's inquiry is incomplete, as he has omitted to call for and examine the plaintiff's account books for the year 1253, in the month of Bysak of which the plaintiff asserts the defendant first had dealings with him. The plaintiff states that the khata for 1254 B. S., produced in court, exhibits the balance brought forward from the previous year, for which defendant is liable. Its correctness should have been tested by a comparison with the accounts of the latter; as upon the result the truth of plaintiff's claim must mainly depend. The appeal is accordingly decreed, and the case remanded to the moonsiff, who will proceed with reference to the foregoing remarks and then dispose of the case. The value of the stamp to be refunded in the usual manner.

THE 26TH JULY 1848.

No. 119.

*Appeal from a decision of the Moonsiff of Culna, Khoda Buksh,
dated 23d March 1848.*

Khoondkar Mahomed, (Plaintiff,) Appellant,

versus

Sheik Mukbool, (Defendant,) Respondent.

THIS is a suit for defamation; damages laid at 16 rupees.

The defendant denies and pleads justification. From the evidence of plaintiff's witnesses it would appear that the plaintiff is in needy circumstances, and does not hold a position in society that would suffer by abusive epithets being applied to him, nor is it proved that the offensive terms, used by defendant towards him, have in any way injured him. The witnesses for the defence depose to plaintiff's having been in jail in irons, and to his being in his domestic life a disreputable character; and under such circumstances opprobrious epithets applied to him, admitting plaintiff's statement to be correct, would not entitle him to damages. The

moonsiff dismisses the case; and in this judgment I concur. The appeal is dismissed, and the decision of the lower court affirmed, without serving a notice on the respondent.

THE 27TH JULY 1848.

No. 122.

Appeal from a decision of the Moonsiff of Kylee, Pecaree Mohun Banoorjee, dated 16th March 1848.

Gunga Persad Chowdhree, (Plaintiff,) Appellant,
versus

Dhurm Doss Gope and others, (Defendants,) Respondents.

THE plaintiff sues for arrears of rent, accruing from 1250 to 1253, amounting with interest to rupees 4-4-5-1-1. The plaintiff states that the defendants occupy a house belonging to himself and his brothers; that for the years stated they have failed to pay him his share of the rent. The defendants, in reply, state that they leased the house from one Kalee Pershad Mookerjeea, a third party in this case, to whom they have paid their rent to the present time. Kalee Pershad confirms their statement, and adds that the house is his property, and was given to him by the late father of plaintiff, and in support of his claim files a deed of gift duly signed and attested.

The moonsiff dismisses the case in regard to the claim for rent, —the plaintiff failing to prove that he ever received rent or his title to claim it. The moonsiff has, however, entered also into the question of right to the property for which rent is claimed, and pronounces judgment on that point in favor of the third party. The plaint being solely one for rent, the moonsiff should have confined his inquiry to that point. The right of possession is another matter altogether, of which the court cannot in the present case take cognizance. The appeal is therefore decreed, and the case remanded to the moonsiff, with a view to his passing orders in reference to the previous remarks. The cost of stamp to be refunded in the usual manner.

THE 27TH JULY 1848.

No. 125.

Appeal from a decision of the Moonsiff of Culna, Khoda Buksh, dated 17th March 1848.

Bilesur Nath Puramanik, (Plaintiff,) Appellant,

versus

Jye Narain Bhattacharj and others, (Defendants,) Respondents.

THE plaintiff sues to recover rupees 97-4-5, as per deed of instalment, bearing date 18th Aghun 1245. The defendants deny

that their father, Durup Narain, executed the said deed, and state that these proceedings have originated in a dispute and ill-will.

The moonsiff observes that, according to the purport of plaintiff's replication, the kistbundee was for a balance due on a bond, executed by the deceased Durup Narain in 1235 B. S. This bond is not forthcoming; nor is there any allusion in the kistbundee, which, the moonsiff observes, there would have been had such a bond ever existed. The witnesses also depose that when the deed of instalment was executed, there were no other documents produced by plaintiff. He further remarks that the plaintiff, from his appearance, cannot be more than 24 years of age; and he must have therefore been a minor when the deed of instalment was drawn out, and that the latter accordingly must be worthless. On the other hand the defendants' witnesses prove that a feud has existed for some time past between plaintiff and defendants; and under these circumstances he gives a decree for defendants.

The appellant admits in this court that he was a minor when the deed of instalment was executed; adding that his mother, as his guardian, had caused the deed to be drawn out in his name. As, however, this demurrer was not raised in the court of first instance, it can have no weight now. The plaintiff has, in my opinion, utterly failed to prove his claim; and I agree with the lower court that this case has originated to gratify revenge and to annoy the defendants.

The appeal is dismissed, and the decision of the moonsiff affirmed, without serving a notice on the respondents.

ZILLAH CHITTAGONG.

PRESENT: F. SKIPWITH, ESQ., OFFICIATING JUDGE.

THE 3D JULY 1848.

No. 509.

Appeal from the decision of Mr. Finney, Moonsiff of second Town Division, dated 7th September 1847.

Bachenee Bebec, Appellant,

versus

Sanaoollah, Respondent.

THIS was an action for the value of some mangoes appropriated by appellant as her own property but claimed by the respondent.

Several witnesses were produced by both parties to prove their respective right; but the moonsiff gave a decision in favor of the respondent because not only his own witnesses but two of the appellant's declared the tree belonged to him.

The appellant urges that her possession is proved by the measurement papers, but these she neglected to file; and after going through the evidence, I concur with the moonsiff in the decision given by him and dismiss the appeal.

THE 3D JULY 1848.

No. 525.

Appeal from the decision of Khyroollah Shah Budukshanee, Moonsiff of Zorowargunge, dated 31st August 1847.

Musst. Almas Banoo, Appellant,

versus

Musst. Koorshed Banoo, Respondent.

THE respondent brought this action to obtain possession of 1 krant 1 gunda of land, which she stated belonged to her talook of Inayut Ally.

The appellant pleaded that the land was part of her khas talook, but failed to produce any proof in substantiation of her plea in the moonsiff's court.

In her appeal she says she had filed her proofs in a suit brought by Nujmoodeen, the cultivator of the soil, and which is pending in appeal. On examining the record of that case, however, I can find no exhibits but simply a reply filed on her behalf by her husband. As the appellant failed to support her plea in the lower court, her objections to the decisions cannot now be entertained, and I therefore dismiss the appeal.

THE 4TH JULY 1848.

No. 511.

Appeal from the decision of Baboo Poorno Chunder, Moonsiff of Howlah, dated 28th September 1847.

Hyder Alli, (Defendant,) Appellant,

versus

Waridoollah and Musst. Budroonnissa, (Plaintiffs,) Respondents.

THE respondents, as heirs of Syud Bussuroollah, sued upon a bond dated Chyte 1200, for rupees 16, payable upon the 24th Bysack 1201.

The appellant denied all knowledge of the transaction, and pleaded that he was at enmity with the respondent and was about to sue him for the value of betelnuts and other goods due to him.

The moonsiff gave a decree for part of the amount claimed, observing that, although the defendant had been repeatedly called upon to prove his allegation, he had omitted to do so.

The appellant urges that the moonsiff did not take the evidence of his witnesses and only examined two of the five witnesses to the bond.

From an examination of the record I observe that the appellant was called upon on the 6th and 31st August to file his proofs, and that he has omitted to do so, and he has stated no reason for his omission in appeal. If the plaintiff considered his case proved by two witnesses, it was unnecessary for him, or at least, optional to him, to have the other three examined, so that this plea is inadmissible.

The appellant in his *juwab* admits that he has traded with the respondents and their deceased relative, and I therefore see no reason to doubt the correctness of the decision, which I confirm.

THE 4TH JULY 1848.

No. 512.

Appeal from the decision of Moulvee Gudah Hossein, Moonsiff of first Town Division, dated 9th September 1847.

Einoodeen, (Defendant,) Appellant,

versus

Kalecnath Bundopadeah, (Plaintiff,) Respondent.

THE respondent sued appellant for rent for the years 1202, 1203, 1204, and 1205.

The appellant pleaded that he has been a resident of Akyab for 20 years, and did not return to Chittagong till 1205 ; but the moonsiff, without calling upon him to prove his plea, gave a decree against him agreeably to the report of an ameen deputed by him to hold a local investigation. This report was filed on the 7th September, and the case decided on the 9th, so that the appellant had no opportunity of stating his objections to it. I therefore reverse the moonsiff's decision, and return it that he may take evidence to the absence of the appellant during the time stated by him, and also to listen to any objections he may offer to the ameen's report. The appellant is entitled to receive back the value of his stamp.

THE 4TH JULY 1848.

No. 514.

Appeal from the decision of Moulvee Alli Newaz, Moonsiff of Bhultecaree, dated 8th September 1847.

Saduk Alli, (one of the Defendants,) Appellant,

versus

Musst. Soobudrah, (Plaintiff,) Respondent.

THE respondent sued the appellant and four or five other persons for the rent of a tank called Himmuth Singh. Several of the defendants appeared and admitted the justice of the claim ; and the moonsiff gave a decree accordingly, releasing, however, the appellant from the claim.

The appellant urges that the tank is his, and that, although no decree has been passed against him, his interests are thereby injured. He also states that he was not served with the usual notices.

On examining the record it appears that the peons who served the notices at his house reported that the appellant was not at home ; but the moonsiff omitted to take evidence to the fact of the issue of the notices. The moonsiff's decision, therefore, must be reversed, and the case returned that the moonsiff may receive the

appellant's reply to the action and pass such orders thereon as he may think proper. The appellant is entitled to the value of his stamp.

THE 8TH JULY 1848.

No. 520.

Appeal from the decision of Khyroollah Shah Budukshanee, Moonsiff of Zorowargunge, dated 20th September 1847.

Nizamooddeen, (Plaintiff,) Appellant,

versus

Ameenooddeen and others, (Defendants,) Respondents.

THE appellant stated that in 1838 he had obtained a decree of 4 cowrees of land, which formed part of his tuppah, and that the defendants had, during the absence of his ryots, dispossessed him of it.

The moonsiff in his decision says that it is unnecessary to enquire whether this land formed part of the former decree or not, because the appellant did not apply for an ameen to give him possession of it, and that moreover the copy of the decree filed is altered in the very place where is stated the quantity of land obtained by him, and he therefore dismissed the suit.

The appellant offered to get an authenticated copy of the decree from the judge's court, but the moonsiff refused him permission, stating that he had made the application with the view of delaying the decision of the suit.

This decision is manifestly improper, and I therefore return the case that the moonsiff may allow the appellant to file another authenticated copy of the decree, and then ascertain whether the land claimed forms part of it or not. The appellant is entitled to the value of his stamp.

THE 11TH JULY 1848.

No. 521.

Appeal from the decision of Khyroollah Shah Budukshanee, Moonsiff of Zorowargunge, dated 31st August 1847.

Ahmud Allee and Dununjee, (Defendants,) Appellants,

versus

Punoollah Booeah, (Plaintiff,) Respondent.

THE respondent states that although he does not cultivate any land of the appellants, they attached his property and compelled him to pay rupees 8.

Ahmud Ally, in his *jowab*, says that his wife purchased the land and that the respondent settled with her for 7 rupees per kance, and that he has never attached his property.

Dununjee similarly denies that he ever attached the respondent's property, but says he cultivated 15 gundahs of land, and on his instituting a suit against him he voluntarily paid him 5 rupees rent for the years 1207 and 1208.

As the moonsiff considered the attachment of the property to have been proved and to have been illegal, he gave a decree for the amount claimed.

Dissatisfied, the appellants urge that they were not called upon to file their proofs, but this appears to be untrue. They were ordered to file their proofs on the 14th August, and Ahmud Ally filed a kuballa on behalf of his wife and an old kubooleut given to a former tuppadar in the year 1177. They did not file a list of witnesses, nor any kubooleut given by the respondent to Musst. Ahmednissa for the year for which the rent is claimed, and I therefore confirm the moonsiff's decision and dismiss the appeal.

THE 11TH JULY 1848.

No. 522.

Appeal from the decision of Khyroollah Shah Budukshanee, Moon-siff of Zorowaryunge, dated 20th September 1847.

Mahomed Wassil and others, (Defendants,) Appellants,

versus

Musst. Altaf Bebec and Nujcemooddeen, (Plaintiffs,) Respondents.

THE respondents brought this action to recover possession of a tank dug by their ancestor, Saduk Chuklahdar, from which they were ousted as they allege, by the appellant, in the month of Poos 1208 M.

The appellants pleaded that though the tank was dug by Saduk Ally he had received compensation for doing so, and had never asserted his right to it during his life time or held possession of it, and that the right of it is vested in them.

The moonsiff, after hearing the evidence on both sides, decreed possession of half the tank to each party and from this decision each has appealed.

The respondents, in support of their claim, filed a roobukaree of a deputy collector, dated the 27th April 1839, in which the right of the tank is declared proved to be vested in the respondent, and both parties produced witnesses.

From the evidence adduced, it is proved that the appellants have long enjoyed the use of the tank, and have buried their dead in its banks; and that it is close to the house of the appellants, and distant from that of the respondents. There is no evidence to shew that Saduk Ally Chuklahdar ever exercised any right of ownership during his life time, nor satisfactory evidence that the respondents have done so. Their witnesses only state generally that they have done so, but have not described any specific act from which their right can be presumed. They attempted, it is true, to fish the tank in the year 1208, but were opposed by the appellants; and that attempt is the cause of the present action. The roobukaree of the deputy collector sets forth that it is proved that the tank belongs to the respondents; but it does not specify the nature of the proof, &c., it moreover declares that the use of the tank and the right of burial of their dead is vested in the appellants. Under these circumstances I reverse the moonsiff's decision, and dismiss the respondents' claim. The costs of both courts to be defrayed by the respondents.

THE 11TH JULY 1848.

No. 526.

Appeal from the decision of Khyroollah Shah Budakshancee, Moonsiff of Zorovargunge, dated 20th September 1847.

Altat Becbee and Nujcemooddeen, (Plaintiffs,) Appellants,

versus

Mahomed Wassil and others, (Defendants,) Respondents.

THIS case is the same as the one reported above. The appeal is dismissed with costs.

THE 11TH JULY 1848.

No. 524.

Appeal from the decision of Mr. Finney, Moonsiff of second Town Division, dated 8th September 1847.

Golam Hossein, (Defendant,) Appellant,

versus

Mukbool Ally, (Plaintiff,) Respondent.

THE respondent brought this action, to reverse the measurement papers of a tank of 13 gundahs, 1 cowree of land, and the appellant brought a counter suit to obtain possession of the tank.

Both suits were pending in the moonsiff's court; but instead of deciding both together, he gave a decree in the present case in favor of the respondent, observing, "and be it borne in mind that should the said defendant (Golam Hossein) be able to establish his claim on the land on which the dags are, this order shall not affect his right." The appellant very naturally objects to this conditional decree against him, and urges that all his documentary evidence is filed in the suit instituted by himself to obtain possession of the disputed tank. The conditional order of the moonsiff is irregular, and as both cases are so intimately connected he ought to have decided both at the same time. I therefore reverse his decision, and return the case to him, that he may, with reference to the above observation, decide both cases at the same time, so that one decision may not be opposed to the other. The appellant is entitled to the value of his stamp.

THE 11TH JULY 1848.

No. 528.

Appeal from the decision of Moulvee Alli Nawaz, Moonsiff of Bhutteeurce, dated 14th September 1847.

Nussuroollah Lclandar, (Defendant,) Appellant,

versus

Mahomed Koresb, (Plaintiff,) Respondent.

THE respondent brought this suit to compel the appellant to renew his pottah for 12 kancees of land upon an annual jumma of rupees 7-8, on the ground of its being a junglebooree tenure.

The appellant denied that the respondent held his lands at a fixed rent, and moreover stated that he was in possession of 1 d., 1 k., 4 g., 2 c., for which he ought to pay rent at the rate of 2 rupees per kance.

As the respondent could give no proof of right to hold his lands at a fixed rent, the moonsiff deputed an ameen to measure the land in his possession, and also took evidence to the rates usually paid for land in the neighbourhood. The ameen reported that 14 k., 9 g., 2 c., 1 k., 4 d., was in the respondent's possession, and the moonsiff fixed the rent to be paid for it at the rates of the village, or rupees 13-14-2.

The appellant objects that the rate is too low and that 2 rupees per kance is the proper rate. Of this, however, he could give no evidence whatever, nor of his statement that the respondent holds more land than he is reported to do by the ameen. I therefore confirm the decision, and dismiss the appeal.

THE 12TH JULY 1848.

No. 530.

Appeal from the decision of Moonshee Abool Hossein, Moonsiff of Bhajpore, dated 20th September 1847.

Shumsher Ally Chowdree, (Defendant,) Appellant,

versus

Mahomed Alli, (Plaintiff,) Respondent.

THIS was an action by the respondent, to reverse a kubooleut forcibly taken from him by the appellant in the month of Kartick 1208 for 2 k., 10 g.

The appellant denied that he had taken any kubooleut of the date mentioned, but said the respondent had given him one voluntarily in 1205, agreeably to which he received rent from him.

As force was proved in compelling the respondent to sign a kubooleut in 1208, the moonsiff gave a decree, ordering its reversal.

The appellant urges that as the case was only pending two and a half months, he had not sufficient time allowed him to repel the claim set up to prove his kubooleut of 1205, and that he was not even called upon to do so.

From a perusal of the record it appears that after filing his jowab, he was not called upon to disprove the claim. I therefore reverse the moonsiff's decision, and return the case, that he may listen to any evidence the appellant may wish to bring forward to repel the charge. The appellant is entitled to receive back the value of the stamp.



THE 15TH JULY 1848.

No. 529.

Appeal from the decision of Moulvee Gudah Hossein, Moonsiff of first Town Division, dated the 8th September 1847.

Nooroollah, (Defendant,) Appellant,

versus

Abdool Hameed and Abdool Hadec, (Plaintiffs,) Respondents.

THE respondents state that 1 k. 10 g. of waste land, road, and nullah have long been in their possession in mouzah

Chandgong, and was recorded in their names by Bushtub Churn ameen in dag 2130, of the measurement papers of 1200; and that the appellants dispossessed them in the year 1202, and have brought the waste land into cultivation. They therefore claim possession, together with mesne profits from the date of dispossession.

The appellants claim the land as theirs, and say it is situated in mouzah Sholah Shehur, having been recorded in their names by Nemic Churn ameen in measurement papers of 1200.

After taking evidence the moonsiff deputed three several ameens to hold a local investigation. Two of them reported that half the land was situated in mouzah Chandgong and half in Sholah Shehur, and the third Obeichurn declared that the whole belonged to Chandgram. The moonsiff, after comparing the chittahs of the ameens deputed by him with the chittahs of the ameens appointed by the deputy collector, decided the land to be situated in mouzah Chandgram, and to belong to the respondents. As the land, however, had been broken up and brought into cultivation by the appellants, he disallowed the claim for mesne profits.

The maps of three ameens, deputed by the moonsiff, agree in all respects. The chittah filed by the appellant shews that a tank belonging to him is the southern boundary of mouzah Sholah Shehur, and the investigation of the ameens proves that the land claimed is to the north of the tank, and consequently belongs to mouzah Chandgram. I therefore confirm the moonsiff's decision, and dismiss the appeal.

THE 15TH JULY 1848.

No. 531.

Appeal from the decision of Moulvee Gudah Hossein, Moonsiff of the first Town Division, dated 8th September 1847.

Nooroolah, (Plaintiff,) Appellant,

versus

Abdool Hameed and Abdool Hadee, (Defendants,) Respondents.

THIS was an action to reverse the measurement chittahs of 4 gundahs, 1 cowree of land, being part of that which was the subject of the suit No. 529.

As the land in question is by that decision declared to belong to the respondents, I dismiss the appeal.

THE 18TH JULY 1848.

No. 536.

Appeal from the decision of Moulvee Gudah Hossein, Moonsiff of first Town Division, dated 7th September 1847.

Futteh Ally, (Defendant,) Appellant,

versus

Amcenah Beebee, (Plaintiff,) Respondent.

THE respondent says she was married to the appellant in 1207, and that he turned her out of the house in 1208; that in the presence of arbitrators he agreed to pay her two rupees a month which he has not done, and she therefore brings this action for alimony for six months.

The appellant pleads that respondent proposed to, and persuaded him to marry her, which he did, but that he afterwards found out she was a married woman, and therefore gave her up, and that on giving her up she gave him a farkuttee, declaring she had no claim upon him.

As the marriage was proved, and the agreement to pay her two rupees a month was established, the moonsiff gave a decree. The farkuttee was written on an 8 annas stamp, and as it required a stamp of rupees four and the appellant refused to have a proper stamp affixed, the moonsiff properly rejected it.

The appellant urges that the moonsiff did not call all his witnesses to prove his farkuttee, or take evidence that the respondent is now living an abandoned life. This appears to be the case, but as the farkuttee is inadmissible it was unnecessary to prove it. There is no evidence to prove, nor indeed is it alleged, that the respondent ever behaved ill while living with her husband; and he is bound to provide her with maintenance. I therefore confirm the decision, and dismiss the appeal.

THE 18TH JULY 1848.

No. 540.

Appeal from the decision of Khyroollah Shah Budukshanee, Moonsiff of Zorowargunge, dated 20th September 1847.

Mahomed Azeem, (Plaintiff,) Appellant,

versus

Rammohun, (Defendant,) Respondent.

THE appellant states that the respondent cultivates 5 gundahs of land belonging to him in dag 633; and that he has served him

with notice to settle for it; but that he will take no notice of his requisition.

The respondent denies that he cultivates the land; and as the appellant could not prove that he did so, the moonsiff dismissed his claim. In appeal, he urges that the moonsiff ought to have deputed an ameen to hold a local investigation, and that if he had done so he should have been able to have proved defendants' possession. Such an objection cannot be entertained; if he could prove it by fair means before the moonsiff, it is not likely he should do so before an ameen. I confirm the decision, and dismiss the appeal.

THE 18TH JULY 1848.

No. 549.

Appeal from the decision of Khyroollah Shah Budukshance, Moonsiff of Zoromargunge, dated 24th September 1847.

Ameerooddeen, (Defendant,) Appellant,

versus

Kumer Ali and Ramkant, (Plaintiffs,) Respondents.

THE respondents sued to obtain possession of 8 kanees, 17 gundas, 2 cowrees of land, which they alleged the appellant refused to give up, or to pay rent for.

The appellant denied that he held possession of more than 4 kanees, 12 gundas, 2 cowrees, which he stated to be nankar.

The moonsiff did not hold any local enquiry, but, after taking the evidence of several witnesses, decided that the appellant was entitled to maintain possession of the land, provided he agreed to make a settlement for it with the respondent within the period of one month from the date of the decrec.

The appellant urges that no sufficient enquiry has been made as to the quantity of land held by him; and that moreover a kubooleut forcibly taken from him for the land claimed, has been upheld by the moonsiff as voluntarily taken.

From a perusal of the records of those cases which are pending in appeal, it appears that the appellant sued to reverse a kubooleut forcibly taken from him in the month of Aghun 1207, for 4 kanees, 12 gundas, 2 cowrees, for rupees 38-1; and that the respondent sued upon the very same kubooleut for rent, for 5 kanees, 8 gundas, 3 cowrees, 2 krant; and that the moonsiff decreed the rent claimed,

and upheld the kubooleut. The evidence taken goes to shew that the kubooleut was taken by force, and the appeals have been admitted, and the respondents summoned to shew cause why the decisions should not be set aside.

In the present case it is necessary that the moonsiff should ascertain by the deputation of an ameen the amount of land in possession of appellant; but he should not decide the case till the result of the appeals pending relative to the validity or otherwise of the kubooleut has been communicated to him. I therefore reverse the moonsiff's decisions, and return the case to him, that he may proceed as directed above. The appellant is entitled to the value of his stamp.

THE 21ST JULY 1848.

No. 541.

Appeal from the decision of Moulvee Abool Hossein, Moonsiff of Hathazaree, dated 29th September 1847.

Rumzan Ally, (Defendant,) Appellant,
versus

Imamdee, (Plaintiff,) Respondent.

THE respondent stated that one Ramchurn obtained a decree on the 6th November 1845 against him, Rumzan Ally and the estate of Buksh Ally deceased, the whole of which he, the respondent, has liquidated; that Buksh Ally died, leaving no property whatever, and he subsequently brought this action to recover from the appellant half the value of the decree, which had been satisfied by him.

The appellant pleaded that he was surety for the payment of the money upon which the decree was given; and that as it had been liquidated, no claim could lie against him.

The moonsiff, in his roobukaree, says that the decree is given jointly against Imamdee, Rumzan Ally and Buksh Ally, and as the appellant was surety for Buksh Ally, who has died without property, he is responsible to Imamdee.

The decree, dated 6th November 1845, sets forth that it is proved that Buksh Ally and Imamdee, upon the security of Rumzan Ally, had borrowed money from Ramdoolall, the father of Ramchurn, and declares therefore all three responsible. It is evident that the appellant only became responsible for the payment of the money by Imamdee and Buksh Ally to Ramdoolall, the father of Ramchurn, and not for the parties paying it in equal shares; and the moonsiff's decision therefore cannot be upheld. I therefore reverse it, and dismiss the claim. The respondent to pay all the costs.

THE 21ST JULY 1848.

No. 543.

Appeal from the decision of Khyroollah Shah Budukshanee, Moon-siff of Zorowargunge, dated 2d October 1847.

Golam Nubee, (Defendant,) Appellant,

versus

Musst. Jonab Beebee, (Plaintiff,) Respondent.

THE respondent says that her son obtained a decree for 2 k., 15 g., in talook Ashud Walee, and obtained possession, that he died childless, and the land reverted to her, and the appellant ousted her out of 6g. in the year 1205; and she therefore brings this action to obtain possession.

The appellant claimed the land as belonging to him; and the moonsiff, upon the evidence of three witnesses, decided that the land belonged to the respondent.

The original decree filed shews that the decree was given for 2 k., 15 g., and to determine whether this is part of that land, the moonsiff ought to have called for the chittahs agreeably to which the respondent's son was put in possession, and then, if necessary, have deputed an ameen to compare the boundaries therein laid down, with the boundaries of the land claimed. His decision is incomplete; and I therefore reverse it, and return it for re-investigation. The appellant is entitled to receive back the value of the stamp of appeal.



THE 21ST JULY 1848.

No. 545.

Appeal from the decision of Moonshee Abool Hossein, Moonsiff of Bhojpore, dated 23d September 1847.

Nowzish, (Defendant,) Appellant,

versus

Mahomed Banoo, (Plaintiff,) Respondent.

THE respondent says he had charged Kubeer Mahomed and others before the magistrate with setting fire to his house; and that he in consequence seized him, and caused him to be carried off

to the house of the appellant, where he kept him imprisoned ten days, and on the 4th Falgoon 1207, compelled him to sign a bond drawn out in favor of Nowazish, and then released him: he therefore brings this action to set aside the bond.

Appellant says the bond was executed voluntarily, but omitted to bring forward any evidence during the period of eight months; and the moonsiff, after hearing two witnesses, decreed the case.

The appellant now says he was not aware that his witnesses were called for, as the moonsiff did not serve him with notice. An examination of the record shews that his vakeels were in attendance, and that during the period of eight months he adduced no proof in support of his plea. I therefore confirm the decision, and dismiss the appeal.

THE 22D JULY 1848.

No. 495.

Appeal from the decision of Moonshee Abool Hossein, Moonsiff of Bhojpore, dated 23d August 1847.

Shumsheer Ally and Choonoo, (Defendants,) Appellants,

versus

Toofur Ally, (Plaintiff,) Respondent.

THE respondent brought this action to recover the value of property illegally distrained by the appellants for the rent of lands alleged to have been cultivated by him but which he did not cultivate.

The appellants pleaded that the respondent had executed a kubooleut to him on the 4th Maug 1205; but as he could not produce it, the moonsiff decreed the case against him.

In appeal, they urged that they repeatedly offered to file the kubooleut, but that the moonsiff refused to receive it. On the 21st of June the appellants were called upon to prove that they had tendered the kubooleut to the moonsiff, and on the 28th they presented a petition, stating that the kubooleut had been burnt since the case was decided. Their witnesses state that the kubooleut was offered to the moonsiff once during the month of Bysack; but they cannot state the date. They also say that a box in which the appellant used to keep papers has been burnt, but whether the kubooleut was in it or not they cannot say. Under these circumstances I confirm the moonsiff's decision and dismiss the appeal.

THE 22D JULY 1848.

No. 548.

Appeal from the decision of Baboo Poorno Chunder Mookerjee, Moonsiff of Howlah, dated 27th September 1847.

Musst. Keincho Beebee, (Plaintiff,) Appellant,

versus

Ahmud Ally and Mahomed Baris, (Defendants,) Respondents.

No. 554.

Ahmud Ally, (Defendant,) Appellant,

versus

Musst. Keincho Beebee, Plaintiff, (Respondent.)

THE plaintiff stated that she was in possession of some rent-free land which had resumed by the collector and which ought to have been settled with her, but which owing to the chicanery of the defendant had been settled with him; and she therefore brought this action to set aside the settlement with the view of obtaining an injunction to the collector to make the settlement with her.

The defendant Ahmud pleaded that the land belonged to him, but pending the suit the land was sold for arrears of revenue and purchased by Mahomed Baris.

The moonsiff stated that he could not dispose of the question as the land had been sold, but decided that the defendant Ahmud Ally should pay the costs of suit.

From this decision Musst. Keincho appeals on the ground of the sale having been fraudulently caused by the defendant, Ahmud Ally, and Ahmed Ally because the costs of suit have been decreed against him. Musst. Keincho's plea cannot be entertained in this suit, because, if proved, the sale cannot be reversed and an injunction granted as requested by her; and as the sale might have been prevented by her, I see no reason for saddling the defendant Ahmud Ally with costs. I therefore amend the moonsiff's decision and dismiss the plaintiff's claim. Each party to pay his own costs.

THE 22D JULY 1848.

No. 553.

Appeal from the decision of Moulvee Gudah Hossein, Moonsiff of First Town Division, dated 17th September 1847.

Dewan Ally and Baker Ally, (Defendants,) Appellants,

versus

Baker Ally, (Plaintiff,) Respondent.

THE respondent states he entered into a partnership with the two appellants, and that they subscribed rupees 135-3- $\frac{1}{2}$, with which they purchased paper, pepper, dhal, &c. &c. to the value of

rupees 125-3½, the remaining ten rupees having been expended in boat hire, and other necessary expenses, that the goods were sent in charge of the appellants to Akyab, where they realized rupees 162-10-8, of which he is entitled to rupees 75-14-3-9, in lieu of which the appellants have only paid him rupees 31, and he therefore brings this action for the balance.

The appellants, admitting the partnership, say they subscribed 150 rupees, and purchased rupees 137-3½ worth of goods; but that in shipping them they run foul of a sloop, which so much damaged them that they only realized in Akyab the sum of rupees 104-12, out of which 13 rupees were spent in boat hire, coolies, and other necessary expenses, leaving rupees 91-12 to be divided among them; that they had paid the plaintiffs rupees 38, although he was only entitled to 36-12, and held his receipt for the amount; and that, moreover, 12 maunds of onions, valued at rupees 12, and two rupees worth of parched rice had been left behind in charge of the respondent, and which he had sold, and appropriated the proceeds of.

The appellants altogether failed in proving their pleas, and as it was proved that the cargo was sold for rupees 119, the moonsiff balanced the accounts, and awarded the respondent rupees 10-12, in addition to the rupees 31, acknowledged by him.

The appellants urge that their objections were proved; and that the respondent's witnesses, as well as their own, have proved that the onions and parched rice remained with the respondent; and that they are in consequence entitled to a set-off for their value. The appellants have altogether failed in proving their objections, and although two witnesses nominated by both parties state that some onions remained behind, one of them says they were placed in a godown common to both parties, and he cannot say what became of them. The other states that the respondent appropriated them; but it is observable that no witness has mentioned onions as forming part of the goods originally purchased for the purpose of trading. I therefore confirm the moonsiff's decision, and dismiss the appeal.

THE 24TH JULY 1848.

No. 555.

Appeal from the decision of Khyroollah Shah, Budukshanee, Moon-siff of Zorowargunge, dated 21st September 1847.

Motee Meah, (Defendant,) Appellant,

versus

Oomur Ally and others, (Plaintiffs,) Respondents.

THE respondents say that they rented 13 cowries of land from the appellant, and built in the year 1206 three small houses

upon it at an expense of 15 rupees; and that in the month of Cheit 1208, the appellant forcibly took possession of them; and they therefore bring this action for their value.

The appellant pleaded that the original houses had been built by him; and that when they were blown down in 1206, the respondents built them up again with the old materials; and that in 1208, they gave them up to him of their own accord.

The respondents' statement was fully proved; and although three witnesses deposed to the statement pleaded by the appellant, the moonsiff gave a decree in favor of the respondents; and after going over the evidence I can see no reason to interfere. It would be impossible to build up houses with old materials that have been in use eight or nine years; and it is incredible that, having done so, the respondents should without any apparent reason have given them up. I therefore confirm the decision, and dismiss the appeal.

THE 24TH JULY 1848.

No. 557.

Appeal from the decision of Khyroollah Shah Budukshanee, Moon-siff of Zorowargunge, dated 13th November 1847.

Mahomed Azeem, (Defendant,) Appellant,

versus

Musst. Sonah Beebee, (Plaintiff,) Respondent.

THE respondent stated that her husband, the appellant, had, with Musst. Ameenah his second wife, beaten and ill-used and abused her, and turned her out of doors, and she therefore brought this action against him for defamation.

Mahomed Azeem stated that the respondent has misbehaved herself and left his house; and that he had divorced her on the 23d Fagoon 1208 in consequence.

As it was proved that the appellant had called his wife ill names and turned her out of doors, the moonsiff refused to entertain the pleas urged by appellant, but gave a decree against him. As the pleas urged by the appellant have not been investigated, and of great importance, I return the case to the moonsiff for re-investigation; and he must also ascertain whether the abusive language was used before or after the divorce, should the divorce have occurred. The appellant is entitled to the value of the appeal.

THE 24TH JULY 1848.

No 559.

Appeal from the decision of Khyroollah Shah Budukshanee, Moon-siff of Zorowargunge, dated 27th November 1847.

Mahomed Mussee, (Defendant,) Appellant,

versus

Deanutoollah, (Plaintiff,) Respondent.

THE respondent says he purchased 12 gundas of land, the property of Nuzur Mahomed, being a 2 annas, 10 gundas share of a talook named Buxee Booeah, and Kurmally Purmally, the son of Nuzur Mahomed, deceased; and that the appellant refuses to give him up possession of 5 gundas of it.

The appellant declares the land to belong to the 13 annas, 6 gundas hissah, the property of Buxee Booeah, and which he has purchased of him.

Both parties filed their deeds of sale; and the moonsiff, without ascertaining whether the land claimed belongs to the 2 annas, 10 gundas hissah, or to the 13 annas, 6 gundas hissah, gave a decree in favor of the respondent, because the talook is entered in the present measurement papers in the names of both the sellers. The shares have long been separate, and each seller has a right to sell the land belonging to him; but as no evidence has been taken to ascertain to which share the land belongs, I return the case for this purpose. The appellant is entitled to receive back the value of his stamp.

THE 24TH JULY 1848.

No. 561.

Appeal from the decision of Moonshee Abool Hossein, Moonsiff of Bhojpore, dated 24th November 1847.

Kulum Beebee, (Plaintiff,) Appellant,

versus

Gomanee, Hossun Ally, and others, (Defendants,) Respondents.

THE appellant states that five cows, belonging to her, were attached and sold by the respondents although she does not cultivate their land.

Hossun Ally pleads that the appellant, her husband, and son, Abas Ally, all live together, and that he attached five cows belonging to them for rent due for 1207.

The cows were all attached on one date, the 31st March 1846, and sold on the 7th of April; but as the ameen wrote two roosedads, one on the 7th of April for the sale of three cows, and one on the 18th of April for two, the appellant brought two actions for recovering their price.

The appellant altogether failed in proving that the cows belonged to her, and it was proved that her husband had given a receipt for the excess price they bought at auction, in which he expressly declared they belonged to him, and the moonsiff therefore dismissed the claim. I confirm the moonsiff's decision and dismiss the appeal.

THE 24TH JULY 1848.

No. 562.

Appeal from the decision of Moonshee Abool Hossein, Moonsiff of Bhojpore, dated 24th November 1847.

Kulum Beebee, (Plaintiff,) Appellant,

versus

Gomanee and others, (Defendants,) Respondents.

As this case is in reality the same as the one above, No. 561, the same order is passed.

THE 25TH JULY 1848.

No. 165.

Appeal from the decision of Khyroollah Shah Budukshanee, Moonsiff of Zorowargunge, dated 13th March 1848.

Bindrabun, (Defendant,) Appellant,

versus

Musst. Soobee, (Plaintiff,) Respondent.

THIS was an action brought by the respondent for the maintenance of an illegitimate child, and the appeal was, upon her petition, called for, out of its usual order.

The respondent stated that in 1206 the appellant had enticed her to leave her father's house, which she did, and that she cohabited with him till Mang 1208, when a child was born to her, upon which he abandoned her and refused to support her; that she instituted an action against him in the magistrate's court, but

that as he agreed to support her, and paid her some money, she had withdrawn her complaint.

The appellant denied that he had ever cohabited with the respondent, and stated that she had lived with one Bessaram Joogee, who was the father of the child.

The moonsiff stated that, although the appellant denied having cohabited with the respondent, and his witnesses stated she was with child by Bessaram, it was proved that he had by paying her some money induced her to withdraw the complaint instituted by her in the magistrate's court, and he therefore gave a decree against him at the rate of 1 rupee a month, for five months.

There is no evidence whatever to show that the appellant ever cohabited with the respondent. The witnesses of both parties assert that Bessaram was the father of the child, and that the respondent had always admitted that he was so, till his death, when she laid the charge upon the appellant.

It is proved that on the institution of the suit Mogul Chand, the brother of appellant, paid 5 rupees to the respondent, but there is no evidence that the appellant was privy to his so doing, and even had he been so this would not be conclusive against him, for he might have paid the money to induce the respondent to withdraw a false and disgraceful charge. I therefore reverse the moonsiff's decision, and dismiss the claim with costs.

THE 25TH JULY 1848.

No. 502.

Appeal from the decision of Khyroollah Shah Budukshanee, Moonsiff of Zorowargunge, dated 30th August 1847.

Rammohun Thakoor, (Plaintiff,) Appellant,

versus

Ramjea and Ramsunker, (Defendants,) Respondents.

THIS case is connected with No. 501 decided by me on the 27th of June last. The appellant stated that the moonsiff had refused to take the evidence of his witnesses, although he had repeatedly caused their attendance at his court. He was called upon to prove this fact, and to-day two witnesses, attended on his behalf, who stated that the appellant's witnesses attended the moonsiff's court several times, but they could not state the month or the day of the month, and the evidence therefore is valueless. For the reasons stated in case No. 501, I confirm the moonsiff's decision and dismiss the appeal.

THE 25TH JULY 1848.

No. 563.

Appeal from the decision of Khyroollah Shah Budukshanee, Moon-siff of Zorowargunge, dated 24th November 1847.

Budenath, (Defendant,) Appellant,

versus

Mahomed Danish, (Plaintiff,) Respondent.

THIS was an action to set aside a kubooleut for 1 kannee 7 gundas, 2 cowrees, forcibly taken from the respondent by the appellant, who pleaded that it had been executed voluntarily. The moonsiff states that appellant omitted to adduce any proof, and gave a decree, reversing the kubooleut.

The appellant urges that he was not called upon to take out process, and this appears to have been the case. A list of witnesses is filed on his behalf and on the back of it is written an order for the issue of a subpoena. That the subpoena was ever issued or that the appellant omitted to take measures for issuing it, cannot be gathered from the papers. I therefore reverse the moonsiff's decision, and return the case that he may take evidence on behalf of the appellant. The value of the stamp of appeal to be refunded.

THE 25TH JULY 1848.

No. 564.

Appeal from the decision of Baboo Poornochunder Mookerjee, Moon-siff of Howlah, dated 24th November 1847.

Sreeram Joogee, (Defendant,) Appellant,

versus

Moorleedhur, (Plaintiff,) Respondent.

THE respondent states that in Aghun 1207 he lent the appellant rupees 5 to satisfy a claim from one Bushnub Churn, and that he has never paid him.

The appellant admits the loan, but states that he and the respondent trade together in betelnuts, and that in the month of Sawan 1208, they balanced their accounts and he paid the respon-

dent 2 rupees cash, and it was declared between them that Bushnub Churn's claim was satisfied. To prove this plea the appellant brought several witnesses, who stated that they were present and aided the parties in settling the accounts, but although they state that Bushnub Churn's claim was satisfied they are unable to state any other item in the account, nor even the date or year in which the settlement took place. The moonsiff decreed the amount claimed, and after reading the evidence I see no reason to interfere with his decision. There was no written account between the parties to shew the nature and extent of the transactions between them, and it was settled verbally between them; therefore, I confirm the decision and dismiss the appeal.

THE 25TH JULY 1848.

No. 565.

Appeal from the decision of Moulvee Gudah Hossein, Moonsiff of first Town Division, dated 25th November 1847.

Asmut Ally, (Defendant,) Appellant,

versus

Musst. Moncah Beebee, (Plaintiff,) Respondent.

THE respondent stated that she lent her brother-in-law, Ashruff Ally, in the year 1202, rupees 48, and that he lent 9 rupees to the appellant and others on the 21st Srawun 1202; that as Ashruff could not pay her, he, on the 27th Aghun 1204, made over to her the bond given to him by the appellant by an ikrar; and as the appellant will not redeem it, she brings this action for its amount.

The appellant admits the bond, but says that he paid its value to Ashruff before his death, but that he did not get back the bond as he, Ashruff, stated he would give it on his return from the thannah in which he was employed as a burkundauze.

The execution of the ikrar making over the bond to the respondent was fully proved, and the moonsiff therefore decreed the case, observing that he did not believe the witnesses who stated that the appellant had paid the value of the bond to Ashruff, because it was clear from the plaint that Ashruff had died previous to the alleged date of payment.

The appellant has omitted to produce any receipt from Ashruff, and his witnesses only state that they saw 20 arees of rice given to Ashruff, who stated, in their presence, that he had previously received 80 arees from the appellant. Under these circumstances I confirm the moonsiff's decision and dismiss the appeal.

THE 29TH JULY 1848.

No. 566.

Appeal from the decision of Moonshee Abool Hossein, Moonsiff of Bhojpore, dated 27th November 1847.

Mahomed Moorad, (Defendant,) Appellant,
versus

Anundeeram, (Plaintiff,) Respondent.

THE respondent stated that on the 30th Mavg 1198, he lent the appellant and his brother, Kumer Ally, since deceased, the sum of 10 rupees upon a bond, which they had never paid.

The appellant stated that on the date mentioned by the respondent he had given a bond for 48 rupees, which he had redeemed.

As the respondent's bond was proved, and the appellant omitted to take measures for procuring the attendance of his witnesses, the moonsiff decreed the case.

The appellant urges that it was improbable that two bonds should have been executed in one date, and that the moonsiff had not given him sufficient time to cause the attendance of his witnesses. The appellant filed his list of witnesses, and a subpoena was served upon them on the 11th September. He was called upon on the 2d October and 23d November to take measures for attaching their property, but omitted to do so; and I therefore, under these circumstances, confirm the decision and dismiss the appeal.

THE 29TH JULY 1848.

No. 570.

Appeal from the decision of Moulvce Gudah Hossein, Moonsiff of first Town Division, dated 26th November 1847.

Bussur Mahomed *alias* Akber Ally Chowdry, (Plaintiff,) Appellant,
versus

Abdoollah and others, (Defendants,) Respondents.

THE appellant and respondent, Abdoollah, had a squabble at a dinner about precedence, and the respondent turned him out of the mujlis, and he therefore brought this action to be restored.

The moonsiff restored him, but did not allow his costs, and he has therefore appealed. From the evidence it is proved that Abdoollah first opposed the appellant when sitting down, and with the aid of his brothers turned him out of the mujlis. I therefore award the appellant the costs of suit incurred by him in both courts, to be defrayed by Abdoollah.

THE 29TH JULY 1848.

No. 576.

Appeal from the decision of Khyroollah Shah Budukshanee, Moonsiff of Zorowargunge, dated 24th April 1847.

Musst. Bhubanesseree, relict of Ramdoolall, (Plaintiff,) Appellant,
versus

Mohbut Ally and Yoosoof, (Defendants,) Respondents.

THE appellant stated the respondents had borrowed of her husband rupees 24 upon a bond, but had not liquidated it.

The respondents, though served with notice, did not make any defence.

One Bhyrubchunder persented a petition stating that Ramdoolal had left a grandson, a minor, named Keilaschunder, and he prayed he might be allowed, as next of kin to the minor, to oppose the claim.

The moonsiff, without any enquiry whatever into the truth of the petition, stated that it was clear that the appellant had wilfully concealed the existence of the grandson, and he therefore dismissed the claim. I therefore reverse the moonsiff's decision, and return the case that he may take evidence to the petition of Bhyrubchunder, and that he nonsuit the case if the existence of the grandson be proved; if not, that he will decide the case according to its merits. The appellant is entitled to the value of the stamp of appeal.

THE 29TH JULY 1848.

No. 569.

Appeal from the decision of Moulvee Gudah Hossein, Moonsiff of first Town Division, dated 13th November 1847.

Ramtonoo Sein, (Defendant,) Appellant,

versus

Bindrabun Tewarree, (Plaintiff,) Respondent.

THE respondent states that on the 3d Falgoun 1196 he lent the appellant 75 rupees upon a bond, repayable in six months; that on the 4th Cheyt 1200 he paid him 11 rupees interest, but had not paid any thing more.

The appellant denies the bond altogether, and says the action is barred, a period of twelve years having elapsed since the date of the bond.

The execution of the bond was fully proved, but no evidence was adduced to the payment of the 11 rupees interest; and as the period of twelve years must be calculated from the date upon which the money is demandable, not from the date of the bond,

and agreeably to which the suit was instituted under twelve years, the moonsiff decreed the amount.

The appellant urges the same objections in appeal, but as the moonsiff's calculation is correct, and the bond is proved, I confirm it and dismiss the appeal.

THE 31ST JULY 1848.

No. 578.

Appeal from the decision of Moulvee Gudah Hossein, Moonsiff of first Town Division, dated 26th November 1847.

Ramlochun and others, (Defendants,) Appellants,

versus

Musst. Loletah, (Plaintiff,) Respondent.

THE respondent stated that one Izabel Godard had given her ancestor Kaleekapersad, a tank calld Bugecrut, in the month of Poos 1178, which he dug out, and which he and his descendants have held uninterrupted possession of ever since, but that the appellants have, in the measurement papers dated the 30th March 1839, recorded their names as joint proprietors with her, and entered them in dag 2376.

Appellants state that five brothers, of whom Kaleekapersad was one, purchased the tank in 1178, from Izabel Godard, and that they and their descendants have held joint possession of it ever since.

The moonsiff in his decision says it is proved that the parties have held joint possession of the tank for a great length of time, but that the respondent has held possession of the south and west banks. He therefore dismissed the case, but made each party pay his own costs.

To this the appellants object in consequence of the moonsiff's stating that the respondent holds possession of the south and west banks of the tank, and because he has not allowed them costs.

Neither the deed of gift or the deed of sale is forthcoming, but it is proved beyond all doubt that five brothers, Kaleekapersad, Sheeb Churn, Gunesseram, Ramlochun, and Taraheram, and their descendants, have held joint possession of the tank ever since the year 1178, and that the appellant has purchased Sheeb Churn's share, and also Gunesseram's. I therefore amend the moonsiff's appeal, and reverse that part of it awarding the south and west banks of the tank to the respondent, and decide that the respondent shall pay the costs of both courts.

THE 31ST JULY 1848.

No. 583.

Appeal from the decision of Moulvee Gudah Hossein, Moonsiff of first Town Division, dated 26th November 1847.

Musst. Loletah, (Plaintiff,) Appellant,

versus

Ramlochun and others, (Defendants,) Respondents.

THIS suit is the same as No. 578. Appellant urges that she is the sole proprietor of the tank, and the respondents have not proved their right to hold it in joint possession with herself.

The joint proprietorship is fully established, and for the reasons stated in the case No. 578, I dismiss the appeal.

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THE 31ST JULY 1848.

No. 579.

Appeal from the decision of Moulvee Gudah Hossein, Moonsiff of first Town Division, dated 24th November 1847.

Musst. Pecnah Beebee, (Plaintiff,) Appellant,

versus

Abdoollah Khan, Noor Khan, and others, (Defendants,) Respondents.

THE appellant claimed 7 rupees 8 annas, the price of mangoes alleged to have been taken from her trees. The respondent stated the land upon which the trees grew to be in the joint possession of both parties, and as this was proved, the moonsiff dismissed the case; and I see no reason to interfere, and confirm his decision.

ZILLAH DACCA.

PRESENT: HENRY SWETENHAM, Esq., JUDGE.

THE 6TH JULY 1848.

No. 10000.

Original Suit.

Kasheekant Butterjeea, Plaintiff,

versus

Oomakant Butterjeea, Defendant,
and on his demise

Birj Chund Butterjeea, for self, and as guardian for two minor
brothers, namely, Chunderkant and Soorijkant.

Vakeel for Plaintiff—Anund Mohun.

Vakeel for Defendant—Nund Lail.

Suit for possession of a six anna share in the zumeendaree
Bans Deeb Rae, including chukla Noorpoor, and mouzahs Sooruj-
munnee and Kishennugur, valued, including mesne profits, rupees
8,500.

This suit was originally tried by the late principal sudder ameen,
J. Reily, Esq. That officer, on the 16th August 1842, passed a decree
in favor of the plaintiff. Defendant appealed. The Sudder Dewanny
Adawlut, under date the 18th March 1845, reversed Mr. Reily's
decision, and directed that the case be tried *de novo* by the judge,
observing: The claim was founded on a butwara, which is acknow-
ledged by plaintiff and defendant to be the foundation of their re-
spective rights. The principal sudder ameen had not called for
that document nor for authenticated copy of it. He had inspected
only an extract, or muntukhub, filed by the parties. The judge
will call for the butwara to ascertain its tenor, and, if necessary,
make local enquiry, and decide the case.

The original butwara was presented by the plaintiff: the defen-
dant acknowledged it to be the original document.

The plaint, answer, reply, and rejoinder, 16 documents filed by plaintiff, and 14 documents filed by defendant, in support of their respective pleas, together with the customary processes, swell the proceedings to great length; and to assist the decision of the court, the whole of the papers were on the 21st June 1847, referred for the opinion of three arbitrators, namely, Pudum Lochun Ghose, Kaleekinker Rae, and Moonshee Gholam Abas. These gentlemen failed to give any aid in the matter; they were not unanimous; they severally returned a long written opinion in effect as follows: the first named arbitrator would dismiss the plaintiff's claim altogether; the second would award him seven qismuts, or under tenures; the third would decree twenty-five under tenures. It will appear, ultimately, that my decision does not accord with any of the three arbitrators. The case has been argued in several sittings during the last two years; and all the documents have been examined in the presence of the plaintiff and defendant as well as their vakeels. It is briefly as follows.

Bungo Chunder Chowdree died, leaving three sons, to whom he apportioned his estates by a deed of partition during his life. Plaintiff is one of his sons: defendant is the grandson, or son of another of his sons: the third son does not appear a party in the case.

The whole amount of revenue payable by Bungo Chunder Chowdree was Sicca rupees 18,065-14-19; by the partition a third of that amount was to be paid by each son; the assessment of each chukla and mouzah is recorded in the partition; but by allotting certain qismuts, or under tenures, appertaining to a certain chukla, as the private property of one son, with the view to equalize the profits of all,—the remaining under tenures of the same chukla being the joint property of the three sons, and still only one son, to whom the few under tenures were granted, being held liable under the partition deed for the entire assessment of the chukla, has given rise to the suit at issue.

In illustration of the matter above set forth, and in explanation of the plaintiff's claim, it is observed chukla Noorpoor 6 annas originally comprised 25 qismuts: these constitute the claim of the plaintiff, together with two other mouzahs, separately assessed, and a hatt and julkur within chukla Noorpoor. Plaintiff pays the assessment of 6 annas of chukla Noorpoor, viz., rupees 276-15, and he, consequently, argues he is entitled to exclusive possession of the whole chukla as his private property according to the partition.

The jumma of chukla Noorpoor 6 annas, muzafat Ramkannye Baboo, is rated in the butwara, 276-15, payable by Kasheekant, the plaintiff.

Huldeeah Kandypara, &c. jumma 276-15, are declared in the same document, but in another part thereof, the private pro-

perty of the said person; the *et cætera*, plaintiff states, expresses the whole 6 anna talooqa, of which the jumma is 276-15.

The following extracts from the butwara elucidate the grounds of his claim.

Extract first entry from butwara :

Chukla Noorpoor, muzafat Ramkannye Baboo, shamil-i-jumma muzkooree jumma 276-15.

The above is the share of Kasheekant (the plaintiff.)

Second extract from butwara :

Muzafat Ramkannye Baboo, pergumrah Ameerabad, &c., jumma 1,476-10-18.

Deduct dakhil 3 deehes Kasheekant Baboo,

Chur Kishennugur,	5	8	9	0
Huldeeah Kandypara, &c.,	276	15	0	0
Soorujmunnee,	4	12	4	0
	<hr/>			
	287	3	13	3

Balance, 1,189 7 4 2

to be paid in equal shares by the three sons of Bungo Chunder.

Third extract from the butwara :

Muhal Khamar, qismut Koreegaon, Koreehatty, Dheetpoor, from the three portions (3 deehes) are allotted to Kasheekant Baboo (plaintiff,) jumma *nil*, these qismuts being included in the jumma 276-15, above noticed.

Plaintiff explains as reason for this special entry, that his father purchased these qismuts separately, but allows they form part of the chukla Noorpoor 6 annas share. Defendant states the butwara, and not deeds of sale, must regulate their rights; that the whole property allotted by butwara might be litigated on pleas of deed of sale.

The defendant states of the 25 qismuts, or under tenures, claimed by plaintiff as appertaining to 6 annas share of chukla Noorpoor, five are in possession of the plaintiff; five plaintiff and defendant and Kasheekant, plaintiff's brother, hold in partnership; six are in possession of strangers, who are no party to the suit; and nine are defaulting under diluvion; and he explains the *et cætera* inserted in the butwara after the names of Huldeeah and Kandypara allude to sub-tenures, of which there are two in Huldeeah, namely, Harpasha and Aghuldea, and one in Kandypara, namely, Beel Kuleeane.

JUDGMENT.

The plaintiff can have no right or title to hold any portion of the general estate as his exclusive property, beyond what is specially gifted to him by the terms of the partition deed.

Huldeeah Kandypara, &c. jumma 276-15, are allotted to the plaintiff in the butwara. These form two qismuts of chukla Noorpoor, 6 annas share, the jumma of which is the jumma above

specified, namely 276-15; but they comprise not the whole talooq, in which there are 25 qismuts named as follows:

Names of Tenures.

Remarks.

1. Huldecab with Huldecab Hatt,	{ Huldecab is specified in partition deed, the share of Kasheekant, but not the hatt, which is held by the plaintiff and defendant in joint tenancy.
2. Dheetpoor,	{ Dheetpore, ditto ditto.
3. Mandral,	{ Defendant states, neither plaintiff nor defendant is in possession of the qismut.
4. Kandypara,	{ Specified in partition deed as plaintiff's.
5. Kootpara,	{ Defendant states is in joint possession of plaintiff and defendant and plaintiff's brother.
6. Kadargaon,	{ Defendant states, diluvion, or Gungashekusht.
7. Gobrund,	
8. Chaikoorpasha,	
9. Josooldecab,	{ Defendant states in joint possession.
10. Dukhun Medny Mundul,	{ Ditto ditto.
11. Dukhun Barra,	{ Defendant states diluvion, or Gungashekusht.
12. Qismut Basce Rampore with Julkur,	{ Ditto ditto Julkur of course remains, but in joint tenancy.
13. Ootur Barra,	{ Defendant states in joint tenancy.
14. Shabaznugur,	
15. Ootur Medny Mundul,	{ Defendant states held by a stranger.
16. Nunglaly,	{ Defendant states diluvion, or Gungashekusht.
17. Omal,	{ Ditto.
18. Mosooah,	{ Defendant states in possession of a stranger.
19. Ootur Kulkar,	{ Defendant states diluvion, or Gungashekusht.
20. Korehatty,	{ Specified in partition deed as private property of plaintiff.
21. Koreegaon,	
22. Dokachy,	{ Defendant states in possession of strangers.
23. Roseror,	{ Defendant states carried away by diluvion.
24. Aral Deeab, ..	
25. Chur Buleeah,	

It is evident it was not the intention of the plaintiff's father to convey the whole share 6 annas of chukla to his son, the plaintiff, as his private property, because he specifies five qismuts by name, 1 Huldeciah and 4 Kandypara, &c. in one place, jumma 276-15, and in another part of the partition paper he gives the plaintiff as his private property, muhal khomar qismuts Koreegaon (21,) Korehatty (20,) and Dhatpore (2,) qismuts of the same chukla : no jumma is recorded in the partition paper account these three tenures, because their assessment is included in the jumma, 276-15, allotted to plaintiff. Two other mouzahs are made the private property of the plaintiff; but they do not appertain to chukla Noorpore, these are Chur Kishennugur, jumma 5-8-9, and Soorujmunee, jumma 4-12-4-3.

It appears unnecessary to pursue the enquiry into the actual state of the qismuts or tenures alleged to have been carried away by diluvion, or passed into the hands of persons who are not defendants in the suit.

The defendant is in joint occupancy with the plaintiff and his brother in qismuts Kootpara (5,) Josool Deeah (9,) Dukheen Medny Mundul (10,) Ootur Barra (13,) and Shabaznugur (14.) To these plaintiff has no exclusive rights recorded in the partition deed. The Huldeciah Hatt and Baseerampore Julkur are also in the joint tenancy. They are not recorded in the butwara as exclusively appertaining to plaintiff.

I, therefore, decree possession to plaintiff according to the spirit, tenor, and letter of the partition deed, which is the foundation of the rights of plaintiff and defendant, the following mouzahs and qismuts, or under tenures, of the six anna share of chukla Noorpore, viz. Huldeciah Kandyparah, muhal khomar qismut Koreegaon, Korehatty, and Dheetpore, jumma 276-15, chur Kishennugur jumma 5-8-9, and Soorujmunnee, jumma 4-12-4-3, and dismiss his claim to exclusive possession in the remainder of the property. I dismiss his claim to exclusive possession of Huldeciah Hatt and Basheerampore Julkur.

I dismiss the plaintiff's claim on defendant for wasilat or mesne profits on all the property at issue in the suit. I dismiss the claim for mesne profits on the land herein decreed his exclusively, which plaintiff pleads due to him on the report of an ameen deputed to ascertain the wasilat and give possession, under the decree of the principal sudder ameen, stated at the commencement of this trial to have been reversed, because in execution of the decree passed in favor of the plaintiff in the case noted in the margin*

* Oomurkant, Kasheekant, and Kaleekant,

versus

The Collector, and Ramkishan, purchaser at public sale.

(the former being original defendant in this suit) relinquished all claim to possession of qismut Kishennugur, jowar Huldceah, Kandypara, and Soorujmunnee, in favor of Kasheekant

(present plaintiff,) and a perwannah, dated the 27th July 1839, was issued by the additional principal sudder ameen to the local ameen, to give Kasheekant exclusive possession of these qismuts. If Kasheekant did not appropriate the assets formally resigned to him by defendant's father, Oomurkant, the default was his own; his brother, and ultimately his nephew were divested of further liability; nor has it been proved that defendants had exclusive possession of the qismuts above named, or of muhal khomar qismut Koreegaon, Koreehatty, and Dheetpore.

As defendant has not usurped the rights of plaintiff decreed his exclusively by this decree under the tenor of the partition deed, the plaintiff will be held liable to full costs of this suit.

THE 6TH JULY 1848.

No. 135.

Appeal from the decision of Moulvee Abdoollah, Moonsiff of the City of Dacca.

Goluk Chunder Surmah, (Plaintiff,) Appellant,

versus

Gourang Bunnik and Gopaul Bunnik, (Defendants,) Respondents.

Vakeel of Appellant—Anund Mohun.

Vakeel of Respondents—Gour Chunder Doss.

SUIT to recover the rent of a house, rupees 63-13-5-1-1.

Plaintiff rented a house in the city of Dacca, to defendants at rupees 2-6 per mensem. They paid from the 9th Assin 1251 till Bhadoon 1252, agreeably to the terms of the agreement; from Assin 1252 to Maugh 1252, the rent of four months and one day was due, viz. 9 rupees, 9 annas, 5 gundahs, 1 cowree, 1 krant. Plaintiff desired to oust his tenants that he might occupy the house himself; he therefore gave them notice to quit within fifteen days, in default thereof he should charge them rent at the rate of rupees 7-8-0 per mensem. They did not vacate his house: he therefore sued them for rent from 17th Maug 1252 to 23d Bhadoon 1253, seven months, seven days, at 7½ rupees per mensem, rupees 54-4, and the rent customary above noticed, 9-9-5-1-1, total 63-13-5-1-1. Defendants answered they long occupied the house at Sicca rupees 2-4 per mensem, and when plaintiff purchased the house, pottah and kubooleut were executed, fixing the rent rupees 2-6; plaintiff agreeing not to demand more.

The moonsiff dismissed the suit, on grounds following: first, that the pottah states higher rent than rupees 2-6 per mensem shall not be demanded; the pottah resembled a pottah, or lease, in perpetuity, therefore plaintiff was not entitled to serve the notice; secondly, a derkhaut, or petition, had been presented by certain opponents to the suit, who disputed the validity of plaintiff's

purchase of the property—they stated he had purchased from Musst. Rokeena, and she had no legal power to sell; that the present suit was a ruse instituted with a view to substantiate after proceedings regarding right and title.

The moonsiff observed plaintiff had not stated from whom he purchased the house, and under the opposition filed, he was not entitled to a decree for any rent from the court.

Appellant pleaded that respondents had in the lower court admitted they were bound to pay a rent of rupees 2-6 per mensem, and, being proprietor, he was at liberty to serve the notice. Respondents urged they had rented the house from 1205 upwards of fifty years.

JUDGMENT.

The suit being for rents claimed under lease and counter-lease, the moonsiff should have weighed the merit of the case with reference to the tenor of these deeds. The validity of plaintiff's purchase was a consideration irrelevant to the point at issue. Defendants had executed an agreement to pay the plaintiff rent at the rate of 2-6-0 per mensem, which being admitted, plaintiff was undoubtedly entitled to the arrears due at that rate. There were no conditions in the lease to render defendant other than tenants at will. The pottah does not specify higher rent shall not be demanded, but that except rents nothing should be demanded. The mode adopted by the plaintiff as proprietor for ousting his tenants, is in accordance with local usage. Under these circumstances I reverse the decision of the moonsiff, and decree to appellant the amount of his claim with costs.

THE 6TH JULY 1848.

No. 108.

Appeal from the decision of Moulvee Abdoollah, Moonsiff of the City of Dacca.

Kishen Churn Busauck, (Plaintiff,) Appellant,

versus

Oochub Gope, (Defendant,) Respondent.

Vakeel of Appellant,—Gokool Chundur.

Respondent, defaulting.

SUIT to recover a bonded debt Sicca rupees 11, with interest equal thereto, total Sicca rupees 22, Company rupees 23-7-4½. On the

26th April 1847 the moonsiff tried the case *ex parte*, and dismissed the suit on these grounds:

First. Only one witness was brought forward to prove the validity of the bond.

Secondly. The suit was instituted eleven years, twenty-one days after the cause of action originated.

Thirdly. The bond appeared recently written.

Plaintiff appeals. First, there were three witnesses to the bond, was demised, one deposed, the third was, at the time the suit was brought forward, in Calcutta, where his deposition might have been taken by commission; that now the said witness, named Daghoo Doss, has returned from Calcutta. He is also states the vakeel, the writer of the bond, his deposition was important to appellant's interests. The other witnesses had already borne testimony that defendant has promised to liquidate his debt. Secondly, the suit was preferred within the period limited by statute of limitation.

Decreed: the moonsiff's decision is reversed, and the suit remanded for further investigation with reference to the appellant's remaining witness,—his deposition having been taken, the moonsiff will again pass judgment on the merits of the case.

THE 6TH JULY 1848.

No. 115.

Appeal from the decision of Mr. W. M. Bird, formerly Moonsiff of Nuraingunge.

Chooramonee Surmah, (Defendant,) Appellant,

versus

Rammanik Surmah, (Plaintiff,) Respondent.

Vakeel of Appellant—Shib Chunder.

Respondent, defaulting.

SUIT to recover the amount of a bond rupees 25, and interest 10 annas, total rupees 25-10.

The moonsiff decreed to plaintiff under date the 26th July 1839, defendant having admitted the justness of the claim.

Defendant appealed, setting forth the case was one of entire imposition; appellant denied the debt, and of course the acknowledgment alleged; respondent was not a resident of the place stated by him; that one Ramjewun through enmity has caused the institution of the suit, and had iniquitously recorded acknowledgment on part of defendant, and other matters. The matter was referred for summary enquiry to Kallee Kinker, present

moonsiff of Naraingunge. On the result of his report, dated the 27th May 1847, under the discretionary power vested in the judge by the provisions of Clause I, Section 46, Regulation XXIII. 1814, I admitted the appeal after a lapse of many years.

The usual notice and notification have failed to cause the appearance of respondent in person or by vakeel.

Some of the pleas of the appeal have been noticed above. It appears, further, the bond has not been filed, and witnesses to an alleged acknowledgment of the debt have not been examined. Under these circumstances I reverse the decision of the former moonsiff, and remand the case to its former number on the moonsiff's file for full investigation and decision on its merits.

THE 6TH JULY 1848.

No. 25 of 1847.

Appeal from the decision of Syed Abas Alli, Principal Sudder Ameen of Dacca.

Mr. G. Ashburner, (one of the Defendants,) Appellant,
(A. B. Martin, and J. C. Imbert, agent and partner of Messrs.
Macintyre Co., Defendants, who have not appealed,)

versus

Bulram Podar and Musst. Ootima, (Plaintiffs,) Respondents.

Vakeel of Appellant, defaulting.

Vakeel of Respondents—Nund Laul.

SUIT to recover the amount of a hoondec, rupees 1,733-8.

The amount was decreed by the principal sudder ameen on the 29th April 1847.

Mr. G. Ashburner appealed through his vakeel, Gokool Kishen. The pleas of appeal were filed on the 16th July 1847.

Gokool Kishen, vakeel, was removed from this court, and appointed vakeel in the Sudder Dewanny Adawlut; consequently on the 14th April 1848, general notification was made according to rule and usage in these matters for the information of his clients, in order that they might nominate other vakeels. Mr. Ashburner has not appointed another vakeel.

This day the vakeel of respondents has presented a petition, representing that appellant has neglected to proceed in his suit for more than six weeks, and praying for a dismissal thereof under the provisions of Act XXIX. 1841.

The appeal is accordingly hereby dismissed.

THE 7TH JULY 1848.

No. 1 of 1848.

Appeal from the decision of Moulree Abdoollah, Moonsiff of the City of Dacca.

Surroop Kurnkar, (Plaintiff,) Appellant,

versus

Ramdhun Gope, (Defendant,) Respondent.

Takeel of Appellant—Ooma Sunkur Doss.

Takeel of Respondent—Moonshee Golam Abas.

SUIT to recover a balance of account in traffic of pice and advance for milk, principal rupees 20-5, interest rupees 5-3-15, total 25-8-15.

Plaintiff claimed eleven rupees due on a pice account, and 8 rupees and 5 rupees advances made to defendant's brother, Lochun, and one rupee advanced to defendant himself, total 25 rupees; the several items being entered on a memorandum plain paper (a hath chitta;) the amount was to have been paid off in milk, 3 seers per diem, at 32 seers per rupee; 3 maunds, 30 seers milk had been paid, for which credit was given rupees 4-11; for the balance rupees 20-5, together with interest 22-9 plaintiff sued. His suit had been dismissed for neglect; he now instituted a new suit for the amount with interest.

Defendant denied the whole transaction, and adverted to the irregularity of the claim. His brother was alleged to have taken from the plaintiff advances amounting to rupees 13; and he was not made a defendant in the suit. He stated plaintiff had no shop for the exchange of pice.

The moonsiff dismissed the suit, on the following grounds: plaintiff claims on a memorandum (hath chitta,) the sum total thereon is not signed by defendant. There is no other document to prove the debt, and the evidence adduced in support of the claim is not credible. Furthermore, improbability attaches, defendant being indebted to plaintiff; why did he make further advances, without any prospect of benefit to himself? for the milk was to be given to another person. From local enquiry, made by the nazir, it appeared there was no shop open for the traffic of pice; and Lochun has not been made a defendant.

Appellant urges the memorandum, on which he claims, is signed by defendant (respondent,) and the nazir reported there was traffic in pice on a small scale; that he had not made Lochun a defendant, because Ramdhun Gope, his brother, entered on the memorandum the sums he took.

JUDGMENT.

On inspection of the memorandum it appears there is a signature on the top of it, but not at the base where the sum total is exhibited; and the nazir's report specifies there had been a pice shop, but when closed was not apparent; but that plaintiff and defendant had no dealings together in pice.

There appear no grounds for altering the moonsiff's decision, which is hereby affirmed, and the appeal dismissed with costs.

THE 8TH JULY 1848.

No. 7 of 1848.

Appeal from the decision of Moulree Abdoolah, Moonsiff of the City of Dacca.

Sheik Alum, (Plaintiff,) Appellant,

versus

Musst. Amooa Beebec, Musst. Munglee, and Lakoo Cutwalee
Burkundaz, (Defendants,) Respondents.

Takeel of Appellant—Nusseerooddeen.

Takeels of Respondents—Ameerooddeen and Golam Abas.

SUIT to open a road, valued 32 rupees.

Plaintiff stated, between the houses of the defendants and Aviet Ter Gregore, in the city of Dacca, there was a thoroughfare, which led from his house to the high street; defendants closed it; the stoppage was removed by the municipal committee; by order of the foudaree court the road was again stopped. He sued for the right of thoroughfare.

Defendant, Musst. Munglee, denied the right claimed. The municipal committee as well as the criminal court disallowed it. Deeds of sale and other documents would prove the non-existence of a thoroughfare.

Decision of the moonsiff. From the magistrate's proceedings, and petition of the plaintiff, presented to the criminal court, it is apparent there was no thoroughfare. The moonsiff, with proceedings of the case in hand, locally investigated the matter, in the presence of the litigating parties; the claim appeared ungrounded; a mere inspection of the premises was sufficient to negative the claim. The deed of sale of Aviet Ter Gregore's property proves by definition of boundaries that no thoroughfare existed. He, therefore, saw no grounds for reversing the magistrate's decision, and dismissed the suit.

Appellant urged no plea calculated to impugn the propriety of the moonsiff's decision. It is accordingly affirmed, and the appeal dismissed with costs.

THE 8TH JULY 1848.

No. 74 of 1848.

Appeal from the decision of Moulvee Abdoollah, Moonsiff of the City of Dacca.

Brijo Laul Shah, Peeloo Shah, Gopal Shah, Lala Shah, Purboo Shah, Musst. Satoo Sawun, Tecluk Shah, Nehal Sawun, Kaloo Shah, Musst. Roop Sawun, Gungapershad Shah, and Fukcer Chand Shah, (Defendants,) Appellants,

versus

Kala Chand Shah, (Plaintiff,) Respondent.

*Vakeels of Appellants—Gulam Abas and Golam Mustafa.**Vakeels of Respondent—Hurreekishore Rae and Mahomed Buksh.*

SUIT to recover rank and station in the society of his caste, estimated at rupees 150.

Plaintiff stated, he came some 12 or 14 years ago from zillah Tipperah, and gave a feast to admit him to the society of defendants, since which they had mutually associated and entertained each other. On the 6th Assin 1254, Brijo Laul Shah, one of the defendants, married, the bridegroom omitted to send him the customary presentation of prepared rice and sweetmeat before the marriage, a ceremony scrupulously observed towards the rest of the clan, and he was not invited to the marriage feast—although when plaintiff's sister was married, and on other occasions, he had invited the defendants. He had done nothing to forfeit caste, and was unjustly thrust out of the society of his friends. He sued to recover his rank and station therein, not the money at which he had valued his suit.

Defendants denied having been invited by the plaintiff, stating he had no sister to marry; that on the marriage of Brijo Laul Shah, plaintiff had been invited in the manner customarily adopted towards him, but he had not attended. He had rated his suit too high, considering the value of kullae he sells may not exceed 16 or 20 annas a month, which affords him support.

Decision of the moonsiff. The parties were in the habit of meeting and feasting together on public occasions, the defendants banquetted together on the occasions of Brijo Laul Shah's marriage, all of them deserted the plaintiff, he was omitted from the party, the slight injured his character. Defendants admitted he was a member of their society, and that he did not attend the festival, his not attending appears not his own voluntary act; had it been, he would not have troubled or distressed himself by instituting a suit solely to restore himself to a station in their (defendants') society. The pleadings and the evidence substantiate the plaintiff's claim. It is therefore decreed, that plaintiff

continue a member of the society of defendants, entitled to visit, associate, and feast with them. Costs are charged to defendants.

Defendants appealed. Appellants wished to make it appear, they invited respondent to Brijolaul Shah's marriage feast. No pleas, however, are advanced, calculated to impugn the moonsiff's decision, which is affirmed. Appeal dismissed with costs. Respondent to pay his own costs in appeal, as no summons was issued for his appearance in person or by vakeel.

THE 14TH JULY 1848.

No. 56 of 1845.

Appeal from the decision of Mahomed Idris, late Principal Sudder Ameen of Furreedpore.

Ramrutton Rae, Hurnath Rae, and Rada Churn Rae, (Plaintiffs,) Appellants,

versus

Muhes Chunder Rae and Issur Chunder Rae, sons of Raj Chunder, deceased; Grees Chunder Rae, Annund Chunder Rae, for self and guardian of Rance Sussee Mookhee, widow; and Kishen Chunder Rae, and Poorun Chunder Rae, minor sons of Taruk Chunder Rae; Ram Chatterjee, heir of Ram Gunga Chatterjee; Joogul Kishore Chowdry; Shaustehram Dutt and Radhamohun Paul, gomastehs; and Gunga Doss, Radhanath Bose, Ram Kishen Singh, Teenoo Doss, Adhoo Paul, Sham Doss, Peetamber Rahoo, Basan Doss, Dhunace, Kubeer Chunder, Kasheerath, Byrub Chunder, Sheeb Chunder, Ram Kishen Dutt, Needheeram, Gokool Chunder, Gource Doss, Kewulram Chund, and Bungo Chunder, (Defendants,) Respondents.

Vakeels of Appellants—Gour Chunder and Golam Russool.

Vakeels of Respondents—Muhes Chunder, Grees Chunder, Annund Chunder, and Rammonee Bose.

Other Respondents, defaulting.

SUIT for right, title, and possession of twenty detached pieces of land measuring in the aggregate 38 beegahs, valued rupees 385.

Plaintiffs state, to their zemindaree pergunnah Teluhatee Ameerabad, talook kismut Neej Oojanee, the following 20 parcels of land appertain; their measurement boundaries and tenants are thus set forth.

Boundaries.

North.

Neela Dutt's land.

Ramjee Doss's land.	No. 1	Tenants	{	3 beegahs.	East.	Khal Moo-checkhalee.
	West.			Ram Chand Dass.		
				Thunnoo.		

16 beegahs land decreed to defendants.

South.

North.

16 beegahs land decreed to defendants.

Gouree Dutt's tenure.

Ramjee's land.	<i>West.</i>	No. 2.	1 beegah. Tenant, Ram Soonder.	<i>East.</i>	Parcel of land No. 1.
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Land decreed to defendants.

South.

Gur or low ground.	No. 3.	Kalcebaree's tank. 1 beegah. Kishore Dutt. Parcel of land No. 2 and Nehal Mundul's.	Ram Chaud's tenure.
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Kalcebaree's tank.	No. 4.	Komar's Tenure. 1½ beegah. Chunder Soom, Gopal Soom. Gouree Dutt.	Neela Dutt.
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Parcel of land No. 4.	No. 5.	Gouree Dutt. 1½ beegah. Chunder Roopae.	Khal Moochee- khalee.
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Nehal Mundul.	No. 6.	Kasheenauth. 1½ beegah. Roopae. Neela Dutt.	Ditto ditto ditto
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Lochun Doss.	No. 7.	Dunneeram Sing—Kishen Jeewan. 2½ beegahs. Pertab Doss and Kasheenath. Parcel of land No. 6.	Byrub Chunder.
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Kalce baree Paoorec.	No. 8.	Dunneeram. 1½ beegah. Kasseenath, and Lochun Doss. Nehal-Mundul.	Parcel of land No. 7.
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Gur or low ground.	No. 9.	A road. 2 beegahs. Komun. Kalcebaree tank. Paoorec.	Parcel of land No. 8.
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Decreed land.	No. 10.	A road. 2 beegahs. Kasheenath. Kasheenath—Bhyrub Chunder.	Khal Moo- cheekhalee.
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<i>North.</i>		
A tank. <i>West.</i> No. 11.	Alooa Khal. 2 beegahs. Dusrut. Paek.	Kishen Chunder.
<i>South.</i>		
Kishen Chunder. No. 12.	Cow path. 2½ beegahs. Dusrut. Kasheenath Doss.	Alooa Khal.
Ramjee. No. 13.	Dhunecram and Kishen. 2½ beegahs. Kasheenath. Kishen Jeewan—Dhunecram.	Ditto ditto.
Ramessur. No. 14.	Ram Doss. 3 beegahs. Tunnoo and Kannoo. Sham Sikdar.	Ram Mohun's de- creed land.
Dhobee's Land. No. 15.	Nace's land. 3 beegahs. Chuck Charya Mat. Ubotar Mundul and Neel Kant. Ram Churn.	Khal Moochee- khalee.
Dhunecram's. <i>S. West.</i> No. 16.	Bhyrub Dutt's decreed land. 1¼ beegah. <i>S. East.</i> Tenant, Lochun Dalee.	Bhyrub Dutt's de- creed land. Ten- nant, Mudoosoo- dun Rae.
Sham Sikdar and Bishen Nath.		
Kumul Doss. No. 17.	Teeluk Chunder. 2¾ beegahs. Chuck Charya Mat. Tenant, Purbhoo. Kasheenath.	Rada Kant and Ram Mohun.
*Chuckerbuttee. No. 18.	Dhahee land. 1 beegah.	Dhunecram.
* Name not legible.	Gorae Paul and Bhyrub Paul. Dhobee land.	
Dhunneeram. No. 19.	Bhyrub Singh. 1½ beegah. Suroop Mundul, Zummeerooddeen, and others. Parcel of land. No. 18.	Pauchoo.

*North.*Gungaram
and Kashee-

Burno Sirmah.

nath's tank. *West.* No. 20. 2 beegahs. *East.* Not specified.

Jaunkee Mundul.

A tamarind tree.

South.

Plaintiffs set forth that defendants, on the plea of taking possession of land which had been decreed to them by the court, had forcibly ousted them from the above parcels of land.

Defendants answered that several of the detached pieces of land formed part and parcel of land decreed to them under a regular suit by Regulation IV. 1793, one was decreed to them summarily under Regulation XLIX. 1793, one was part of a road, the rest were debuttur or rent-free lands, viz.

Parcels of land claimed Nos. 1, 2, 10, 11, 12, 13, and 14, comprising 14 beegahs 16 katas, were decreed to them under Regulation IV. 1793.

No. 19,—1½ beegah, was summarily decreed by Regulation XLIX. 1793.

Nos. 3, 4, 5, 6, 7, 8, 9, and 17, comprising 13 beegahs, were Kulee Thakooranee's rent-free tenures.

No. 16 was Sreedhur Thakoor's ditto, 1 beegah.

No. 20,—2 beegahs, consisted of the road to their dwelling.

Nos. 15 and 18,—4 beegahs, appertained to defendants' zemindaree Newara.

Plaintiffs in reply denied the truth of defendants' answer.

Decision of the principal sudder ameen. The principal sudder ameen observed, his predecessor in office, Syed Abbas Allee, deputed Goluk Chunder, the local ameen, to make local investigation; his report was furnished 28th August 1841 in favor of the plaintiff's claim; but it would seem to have been an *ex parte* enquiry, for defendants did not file their answer to the suit until the 4th August 1843, or two years after the conclusion of the local ameen's enquiry. Considering the ameen's report, therefore, unsatisfactory, on the 2d May 1845, the principal sudder ameen deputed Ramkummul ameen to institute local enquiry *de novo*. This officer executed the duty entrusted to him to the entire satisfaction of the principal sudder ameen, but his conduct was assailed by the plaintiff. Eight days before the ameen furnished his report, plaintiff presented three petitions arraigning the ameen's proceedings. The charges were fully and duly investigated, and nothing was found calculated to impugn the character of the ameen's rocedad. Having examined at length the charges and defence, I concur in the principal sudder ameen's opinion, and acquit the ameen fully of malversation in the course of his investigation. The ameen's report was filed, and the principal sudder ameen recorded judgment that the plaintiff, with

exception to the evidence of three witnesses, who were his own tenants, and a copy of chitta of Nubkishen, measurement ameen, his own dependant, dated 1228 B. S., had nothing to offer in support of his claim; and in the said copy of chitta no boundaries were specified of the lands therein recorded. On the other hand, in a case formerly litigated between the same parties and decreed to defendants by Mr. Cooke, the former judge, 18th July 1843, Mahomed Buksh, vakeel, was deputed to measure certain lands. He measured parcels of land No. 1 to No. 46, comprising 491 beegahs 15 katas. On the grounds of that measurement a decision was confirmed by the Sudder Dewanny Adawlut. Now it appears the parcels of land Nos. 1 and 2, claimed by plaintiffs, correspond with No. 24 in Mahomed Buksh's chitta, No. 10 of plaintiff's claim with Nos. 42 and 43 of said chitta, Nos. 11, 12, and 13 with Nos. 25 and 26, No. 14 with 18 of the chitta: therefore, it is proved that the parcels of land claimed by plaintiff Nos. 1, 2, 10, 11, 12, 13, and 14 are the property of the defendants.

From the roeedad of the ameen, Ramcomul Gooho, the right and title of defendants are proved in parcels of land claimed by plaintiff, Nos. 3, 4, 5, 6, 7, 8, 9, and 17, the rent-free tenures of Kalee Thakoorain, and in 15 and 18 mehal Newara, in which defendants hold possession; and they are in possession also of parcel numbered 19, summarily decreed to them under Regulation XLIX. 1793, and No. 20 is proved to be road leading to defendant's house. Parcel of land No. 16, the rent-free tenure of Sreedhur Thakoor, was resumed by Government, but relinquished because it comprised less than 50 beegahs, as is apparent from the deputy collector's roobukaree dated 2d July 1841. Thus, there is no reason for reference to the collector under Section 30, Regulation II. 1819, but, as defendants have not proved this parcel theirs, it is decreed to plaintiffs, and the claim to all the other parcels is dismissed.

Plaintiffs have appealed. Appellants urge the correctness of the first ameen's report and the falsity of the second ameen's; that five quboolecuts were filed by them, which were not noticed by the principal sudder ameen; and that the boundaries of the parcels of land claimed by them do not correspond with the chitta of lands decreed so as clearly to identify them.

I have examined the five quboolecuts alluded to by appellants, and find they do not serve in any degree to establish their claims, they do not accord with the tenures claimed. The first quboolecut is Kasheenath's for 1231 for five parcels of land aggregating 10 beegahs 5 katas.

There are no boundaries to the parcels of land specified in the quboolecut and no grounds to establish the right claimed thereby.

No. 2 qubooleeut Nundram Mundul's for 1234. This person is not the tenant of any of the lands claimed.

No. 3 qubooleeut Raj Chunder Mundul, 1234, the same remark is applicable to this tenure, no tenant of the name in the land claimed.

No. 4 qubooleeut of Surroop Mundul, 1232, one person.

No. 19, tenure claimed is tenanted by Surroop but with other three persons, this document therefore does not identify the parcel of land claimed.

No. 5 quboolecut of Surroop Mundul, 1235, one person, 15 katas.

This does not tally either with No. 19 parcel claimed, for that is 1 beegah 10 katas, tenanted by four persons.

Appellants urge the correctness of Goluk Chunder the first ameen's report. He took the depositions of thirteen persons, ten of whom deposed in favor of appellants' claim, three in support of respondents' right; but this *ex parte* enquiry made before respondents' answer was filed, cannot be considered sufficient, under any circumstances, to establish appellants' claim, unsupported by any documentary proof, having only the collateral support of the testimony of three of their tenants and nothing else to prove their claim, for the chitta or measurement papers of their own dependant may establish a claim, but not the right and title. It is needless then to pursue the enquiry whether the boundaries of parcels of land Nos. 1, 2, 10, 11, 12, 13, and 14 correspond in all respects with the chitta of Mahomud Buksh. The appeal is accordingly dismissed with costs. The decision of the principal sudder ameen will appear amended in the case following, viz. the appeal from the defendants, *vide* No. 57, appeal case of 1843.

THE 14TH JULY 1848.

No. 57 of 1845.

Appeal from the decision of Mahomed Idris, late Principal Sudder Ameen of Furreedpore.

Mohes Chunder Rae, Issur Chunder Rae, Grish Chunder Rae, and Anund Chunder Rae, (Defendants,) Appellants,

versus

Ramrutton Rae, Hurnath Rae, and Radachurn Rae, (Plaintiffs,) Respondents.

Vakeel of Appellants—Sheeb Chunder.

Vakeel of Respondents—Gour Chunder.

APPEAL to reverse so much of the decision of the principal sudder ameen, dated the 17th June 1845, as decrees to respon-

dents $1\frac{1}{4}$ beegah in No. 16 parcel of land valued at rupees 12-10-12-2-2, out of 38 beegahs valued at rupees 385, noticed in appeal case No. 56.

This case having been detailed in suit No. 56, it is only necessary to repeat, respondents exhibited no more proof to title to this parcel of land than they did for the other nineteen parcels included in their claim. The principal sudder ameen lost sight of the principle that the *onus probandi* rests with or devolves on the claimant. He decreed to plaintiffs this item of his claim, because defendants did not prove it theirs to his satisfaction, but defendants were in possession, and they are not liable to ouster, till a better claim or title than they possess be established. Respondents had not proved their right to this portion of property, and were not, consequently, entitled to a decree. In amendment of the principal sudder ameen's decision of the 17th June 1845, I decree in favor of the appellants. Respondents to be charged with costs.

THE 15TH JULY 1848.

No. 35 of 1845.

Appeal from the decision of Mahomed Idris, late Principal Sudder Ameen of Furreedpore.

Rajmohun Rac, Surbo Mohun Rac, Bhoobun Mohun Rac for self, and guardian of Luleet Mohun Rac, his minor nephew, on demise of Bhoobun Mohun Rac, and Raj Kishore Sundyal, guardian of Luleet Mohun, aforesaid, and of Sushee Mohun and Kishore Mohun, minor sons of Bhoobun Rac, (Defendants,) Appellants,

versus

Kishen Mohun Rac, on his demise his sons, Goopee Mohun and Anund Mohun, (Plaintiffs,) Respondents.

Vakeel of Appellant—Nundloul.

Vakeel of Respondents—Anund Mohun and Ghulam Abas.

SUIT to recover possession of 21 khadas, 2 pakees, 9 cowrees, 1 krant, beetee and zuratee land, in mouza Gwarreea and Bundun Rugonautpore and mouza Pucla in pergunnah Askahabad, tuppah Tneyubpore, talooqa ism Rammohun Rac, valued, including mesne profits, rupees 4,901-3-10.

Plaintiffs stated they and defendants were proprietors of an estate. Kishen Mohun, plaintiff, quarrelled with Surbo Mohun and Rajmohun, defendants. In consequence of this feud, in 1238 a

manager of the property was appointed by the court. The manager was removed in Bhadoon 1241 B. S. In Sawun and Bhadoon 1238, the bazar of Jafergunge was carried away by the river Pudda. The bazar was re-established in Gwarreea, &c. in tuppah Tueyubpore, some of the shopkeepers settled in Gwarreea, some in bund Rugonautpore, and some in mouza Pucla in 1238. The manager collected rent from them till Bhadoon 1241, the new bazar was a joint property, and plaintiffs claimed $\frac{1}{3}$ d share.

Defendants denied that the new bazar was established on joint property, it was fixed in Zikeroollah and other talooqas, their private purchase.

The principal sudder ameen found, on inspection of the manager's papers, that no allusion to the bazar was made therein. The bazar, he ascertained, was established chiefly on the private lands of the defendants, but 9 khadas, 3 pakees, 6 gundas of the disputed ground was joint property; plaintiff had been out of possession upwards of 12 years, but his claim was admissible under Section 3, Regulation II. 1805, therefore he decreed to plaintiff 3 khadas, 1 pakee, 8 cowrees, 3 til of the land claimed: the bazar was held on 2 khadas, 5 pakees, 2 krants, of the ijmalec land aforesaid, one-third thereof was decreed to plaintiff.

The defendants dissatisfied appealed. Appellants urge several pleas, to which respondents answer. It is unnecessary to detail the whole in this abstract. The principal sudder ameen erroneously entertained the claim under Section 3, Regulation II. 1805; the provisions thereof presuppose violent ouster and forcible possession to render a case admissible beyond the period limited by Regulation III. 1793, Section 14, viz. 12 years, and they must be satisfactorily proved: in this suit they are not so much as alleged. Respondents declined to join in the expense of establishing the bazar, which appellants, consequently, set up at their own cost; there was no plea on respondents' part of suit intermediately preferred, or minority, or other reasonable grounds for delay urged; therefore the suit could not be legally entertained. Moreover, respondents' claim was not proved, nor any portion thereof, either by evidence, or by documents. Respondents, in their claim, set forth the old bazar was carried away in Sawun and Bhadoon 1238, and then the new bazar was established. Their suit was instituted the 21st Bhadoon 1250, the exact date of the re-establishment of the bazar is not given. Appellants state it was in Asar but giving respondents all the grace they can claim, viz. the month of Bhadoon 1238, for the establishment of the bazar, 12 years elapsed at the end of Sawun 1250 and more than 12 years to the 21st Bhadoon 1250, corresponding with the 5th September 1843, when the suit was instituted; therefore, under the statute of limitation, I dismiss respondents' claim altogether, and reversing the principal sudder ameen's decision, decree to appellants. Respondents to bear the costs.

THE 19TH JULY 1848.

No. 27 of 1845.

Appeal from the decision of Mr. J. Reily, former Principal Sudder Ameen of Dacca.

Kurroonamoe, widow of Goureenath Sein, and Bishennath Sein,
(two of the Defendants,) Appellants,

versus

Kadir Buksh Darogah, on his demise his sons and heirs, Hossein Buksh and Muqdoom Buksh, after them Kalachand Ghose, sale purchaser, (Plaintiffs,) Respondents.

Vakeel of Appellants—Amund Mohun.

Vakeel of Respondents—Nundlaul.

In the original suit plaintiff claimed the privilege as auction purchaser to re-assess rents and sued to recover rupees 1,581-5-9, on account the hawala of Ram Churn Sein, a decree passed in favor of plaintiff. Appellants appealed their portion, rupees 193-0-3. Other defendants have separately appealed, their cases have been disposed of on their merits respectively. Appellants' tenure after local investigation was assessed at 17 rupees, 8 annas, 9 gundahs; and 11 years' rent was decreed at that rate.

Appellants pleas are, that they possess $4\frac{1}{2}$ kanees of land under three tenures, one of 13 gundahs rent-free, the second $2\frac{1}{2}$ kanees appertaining to another talooka, the third 1 kanee 7 gundas included in the respondents' purchase land, alleged to have been assessed before the decennial settlement, and therefore not liable to re-assessment; and that all these tenures have been included in the ameen's measurements as lands sold by auction open to re-assessment.

The third tenure claimed as fixed assessment is portion of the hawala of Ram Churn, which was declared open to re-assessment by a decree of the moonsiff of Poragacha, No. 1551, dated 30th July 1840, in the case of Doorga Guttee Rac and others, heirs of Ram Churn, *versus* Kadir Buksh. The plea of fixed rent tenure has been rejected in the case of the other defendants, who have separately appealed.

The other pleas, viz. that their separate tenures had been wrongfully measured as part of hawala Ram Churn, seems groundless and vexatious.

The ameen conducted his measurement under the exposition of twenty-seven persons. Appellants' holdings were measured the 20th and 21st May 1844, the agents of appellants and respondents were in attendance the first day, the second day of appellants' agents did not attend, but no reasonable cause has been assigned for the non-attendance. Appellants objected to the ameen's measurement; and on the 3d September 1844, the principal sudder ameen

passed orders that another ameen should be appointed to test the accuracy of the former report, provided they paid the expence. Upwards of five months elapsed, and they took no measures for the deputation of another ameen, wherefore, on the 14th February 1845, the principal sudder ameen decreed the suit. No reasonable cause is adduced why appellants neglected the opportunity they had, for a period exceeding five months, of rectifying the error they asserted the ameen had made.

Under these circumstances, there appear no just grounds for altering the decision of the principal sudder ameen, which is accordingly affirmed, and the appeal dismissed with costs.

THE 19TH JULY 1848.

No. 60 of 1845.

Appeal from the decision of James Reily, Esq., former Principal Sudder Ameen of Dacca.

Mohadeo, Kaleesunkur, Ramsunker, Ramguttee, Ramniddee, Ramnath, Kishenram, Ramgovind, and Jodoostee Bunnecks, (Plaintiffs,) Appellants,

versus

Ramguttee, Ramnath, Ramgovind, Ramnarain, Ramkishen, Ramkanace, Bunsec, Ramsunkur, and Sreekishen Bunnecks, (Defendants,) Respondents.

Vakeel of Appellant—Nundlall.

Vakeels of Ramguttee and Ramnarain, Respondents.—Juggomohun and Amecroodeen.

The other seven Respondents, defaulting.

CLAIM, to recover certain privileges founded upon alleged usage, viz. the presentation of panbuttah at marriage festivals. Suit laid at rupees 1,100.

The plaintiffs set forth that in the sumauj, or community of bunyus, it had been the usage from time immemorial at all marriages in their clay to present, in the name of their ancestor, Shamdeb Bunneek and seven others, eight buttahs of pan; that seven marriages had occurred amongst the defendants from 1248 to 1251, when they had omitted the practice; that plaintiffs had sued defendants on a former occasion, and obtained a decree.

Defendants denied they had ever given panbuttah to plaintiffs, or their ancestors; the shasters do not enjoin the usage, which alone could render it compulsory; they had offered no indignity to plaintiffs, and they were not a party in the former decree.

The principal sudder ameen dismissed the suit. He stated an action of this nature is obviously irregular, and therefore, clearly not cognizable. The marriages in question did not all take place on the same day, but in the course of four years, on seven different

occasions. Other minor objections against entertaining the suit are detailed by the principal sudder ameen.

The case being appealed, I referred it for the opinion of a punchayet, sitting apart from the court, under the provisions of Clause 2, Section 3, Regulation VI. 1832. The punchayet appointed were Anund Gopaul Biddalunkur, court pundit, Puddolochun Ghose, and Ram-monee Bhoose, court vakeels. They returned an unanimous decision to the effect, that according to the spirit of Construction No. 1040 the claim from several persons for several acts performed at different dates was cognizable by the court, it being of an hereditary nature; that a similar claim had been decreed, 28th February 1828, by Bhyrub Chunder Pundit, former sudder ameen, which decree was confirmed by the judge, Mr. Richardson, 1st March 1831; that the omission of the ceremony would prove an insult and indignity to the appellants.

Their verdict, therefore, was, that appellants are entitled to pan-buttah from the respondents, but not to the money under value of which the suit was instituted. In addition to the precedent quoted by the arbitrators, other precedents may be noticed. Privileges to the purdhan, or sirdar of bearers, was recognized by the Sudder Dewanny Adawlut, 12th February 1835, in the case of an execution of decree passed by the sudder ameen of Furreedpore, and confirmed by the judge. Privileges were decreed to the sirdar of oilmen by Mr. judge Cooke, 3d June 1836, and to the chief of Sahoos by Mr. Milford, judge of the court of appeal, 30th November 1826. I, therefore, in concurrence with the opinion of the punchayets, reverse the decision of the principal sudder ameen, and decree to appellants, the heirs and representatives of one panbuttah on their marriage festivals according to ancient usage. No part of the amount at which the action is laid is awarded by this decree, but the respondents are made liable to costs of suit in both courts.

THE 20TH JULY 1848.

.No. 36 of 1846.

Appeal from the decision of Moulvee Abdoollah, Sudder Ameen of Dacca.

Mussumaut Sabur Beebee, (one of the Defendants,) Appellant,
(Kannoo,* Defendant, has not appealed,)

versus

Noor Khan, (Plaintiff,) Respondent.

Vakeel of Appellant—Abdool Humeed.

Vakcel of Respondent—Ameerooddeen and Gholam Abas.

To recover jewels, valued rupees 793-0-4.

Kannoo defendant is the father of Noor Khan, plaintiff. Bheekun Khan is brother to Kannoo, and husband of Mussumaut Sabur Beebee, defendant. Kannoo and Bheekun, brothers, conducted business together. Bheekun prepared 520 rupees worth of ornaments for his nephew's (the plaintiff's) marriage, and presented them to him on the 12th Poos 1237 ; on the same day Noor Khan deposited them in charge of his aunt, Sabur Beebee. On the 14th Phalagoon 1237 Bheekun died, and a dispute arose between Kannoo and Sabur Beebee as to the distribution of his effects, which was settled by a punchayet ; one-fourth of Bheekun's property was awarded to his widow, Sabur Beebee, and the award distinctly specified the jewels (claimed) were in her custody. Such is the outline of plaintiff's statement. Mussumaut Sabur Beebee denies she had them ; her nephew had no acknowledgment of them from her. The ornaments were prepared for his marriage ; if he did not marry, he was not entitled to them. The jewels were made whilst plaintiff's father and her husband were in partnership ; and in and during their partnership they were expended. Kannoo defendant answers, plaintiff declares he deposited the jewels with Sabur Beebee, consequently no claim can be borne out against him.

The sudder ameen passed judgment to effect : It had been proved by four credible witnesses that Bheekun presented 520 rupees worth of ornaments to the plaintiff ; and that he deposited them with his aunt, Sabur Beebee. It is also proved by the decision of the punchayet, that ornaments to the value of rupees 520 were deposited the 12th Poos 1237, the day they were gifted to Noor Khan. Defendant can produce no proof of their expenditure, while the brothers, Bheekun and Kannoo, were in partnership. The decision of the punchayet specifies the jewels or ornaments are in deposit with Sabur Beebee, that she is responsible for them. Defendant filed a solehnamah, or deed of compromise, in which a butwara, or division of property, is alluded to. Though frequently demanded by the court, defendant refused to exhibit the list of property divided.

The sudder ameen therefore decreed the plaintiff's claim.

Nothing has been advanced by appellant to impugn the sudder ameen's decision, which is hereby affirmed. The appeal is dismissed with costs.

ZILLAH DINAGEPORE.

PRESENT: JAMES GRANT, Esq., JUDGE.

THE 5TH JULY 1848.

No. 3 of 1846.

Appeal from the decision of Mr. G. U. Yule, Acting Deputy Collector of Bograh, dated the 26th of June 1846.

Mr. J. W. Payter, (Defendant,) Appellant,

versus

Amund Moy Debya, (Plaintiff,) Respondent.

CLAIM, possession of 13 beegahs, 13 cottahs rent-free land, under Clause 1, Section 30, Regulation II. of 1819. The defendant, who is farmer of lot Sawalpara, &c., pergunnah Sagoonah, khas mahal, denied having ousted the plaintiff from her rent-free land, and urged that the plaintiff, not having mentioned the boundaries or other particulars of what she claimed, probably wished to obtain cultivated in lieu of waste land. The acting deputy collector decreed 8 beegahs, 18 cottahs in favor of the plaintiff; and against this decision both parties have appealed. The case was, in my opinion, not cognizable by the deputy collector, as the validity of the plaintiff's tenure was not disputed,—and if it had been, Government should have been made a party in the suit. I therefore decree the appeal and nonsuit the claim.

THE 6TH JULY 1848.

No. 4 of 1846.

Appeal from the decision of Mr. G. U. Yule, Acting Deputy Collector of Bograh, dated the 26th of June 1846.

Amund Moy Debya, (Plaintiff,) Appellant,

versus

Mr. J. W. Payter, (Defendant,) Respondent.

CLAIM, possession of 13 beegahs, 13 cottahs rent-free land. The decision appealed against is the same as in No. 3 of 1846, and for the reasons there given I decree the appeal and nonsuit the claim.

THE 6TH JULY 1848.

No. 1 of 1846.

Appeal from the decision of Mr. G. U. Yule, Acting Deputy Collector of Bograh, dated the 10th of February 1846.

Sreekunt Laharee, (Plaintiff,) Appellant,

versus

Mr. J. W. Payter, (Defendant,) Respondent.

CLAIM, possession of 1 beegah, 1 cottah rent-free land. The defendant, who is farmer of lot Sawalpara, &c., khas mehal, states that the land claimed is not rent-free, but part of 200 beegahs, for which he has applied to be granted a mocrururee pottah for the erection of a dwelling house. The acting deputy collector dismissed the case. This is evidently a boundary dispute without any question as to the validity of rent-free tenure, and was therefore not cognizable by the deputy collector, Government not having been made a party to the suit. I therefore nonsuit the claim, and dismiss the appeal with costs.

THE 7TH JULY 1848.

No. 2 of 1846.

Appeal from the decision of Mr. G. U. Yule, Acting Deputy Collector of Bograh, dated the 11th of July 1846.

Gomypershad Rae, (Plaintiff,) Appellant,

versus

Gudador Chowdree and others, (Defendants,) Respondents.

CLAIM, resumption of 13 cottahs rent-free land under Section 30, Regulation II. of 1819. The defendants state that the land claimed by the plaintiff is part of their dewutter land, 87 beegahs, 5½ cottahs. The deputy collector dismissed the case on the evidence for the defendants, supported by a decision of the judge of Dinagepore, dated the 10th of November 1801, and an ameen's chittas of the plaintiff's estates. It appears that the plaintiff in 1250 bought his estate (Meergong,) from Sheebpershad, the son of Fakeerchand, who purchased it at a sale for arrears of revenue in 1206, also that Fakeerchand, on the 11th Aghun 1207, (24th November 1800,) sued the ancestors of the defendants for possession of 232 beegahs, 9 cottahs, and, on the 10th of November 1801, obtained a decree for 62 beegahs, 13 cottahs, at a

junma of 90 rupees, 0 anna, 19 gundahs,—the remaining land, 152 beegahs, 16½ cottahs (according to the ameen's measurement,) being declared rent-free. The defendants have produced a copy of the said ameen's measurement papers, and assert that the land now claimed by the plaintiff is part of dag No. 437, 16 cottahs, on which their thakoorbaree is situated. The plaintiff has produced his measurement papers of 1250, which tally dag by dag with the defendants up to No. 437, immediately after which there is an extra dag, No. 438, 13 cottahs, causing the following one 439 to tally with 438 of the defendants, and so on. It also appears that an Act IV. of 1840 case, regarding this land, was pending when this suit was instituted by the plaintiff, who gives no explanation as to such precipitation. There is no want of witnesses on either side, but under the above circumstances I agree with the deputy collector in crediting those for the defendants. I therefore dismiss the appeal with costs.

THE 24TH JULY 1848.

No. 1 of 1847.

Appeal from the decision of Pundit Nurhurree Seeromonee, Sudder Ameen, dated the 12th of December 1846.

Ramsurn Misr, (Defendant,) Appellant,

versus

Lala Misr, (Plaintiff,) Respondent.

CLAIM, rupees 551, with interest, said to have been given by the plaintiff to his uncle, the defendant, on the 11th Aghun 1251 B. S., at Malda, for the purpose of purchasing jointly their native village Peeprah, pergunnah Sasram, zillah Shahabad. The defendant denies having received the money. The sudder ameen decreed the case on the evidence of witnesses, considering the want of a document immaterial with reference to the relationship of the parties, and the money having been advanced for a joint purchase. The point for decision is whether or not the witnesses for the plaintiff are to be credited. The plaintiff asserts that he gave rupees 551 to his uncle, who went from Malda to Shahabad by boat, to assist in the joint purchase of their native village in Shahabad, which their agent there had informed them was likely to be sold. In support of this he has produced three witnesses, and sundry letters said to have been sent to him by his uncle, the defendant. The sudder ameen appears to have attached great importance to the defendant's having in the first instance denied all the letters, and having subsequently allowed that one of them

was written by his son ; but, in my opinion, the said letter is greatly in favor of the defendant, as in it rupees 525, sent through the defendant to the plaintiff's brother, are mentioned without any allusion to the previously asserted advance of rupees 551. Moreover, the defendant appears to have been cross-questioned irregularly as to the letters, and the result to have been recorded with a view to convict him of falsehood. In one of the letters denied by the defendant, it would appear that he had made arrangements for any further money that might be required for the purchase, yet he is said never to have mentioned any thing of the kind to the agent who informed them that the village would be for sale and who himself became the purchaser. There was no want of respectable witnesses at Malda, yet the plaintiffs are inhabitants of Gya, Shahabad, and Muzufferpore, and one of them appears to have had an understanding with the plaintiff, as he complained in the foudaree against the defendant for endeavoring to force him to give false evidence in this case, which he could not then well have known about except from the plaintiff. I also consider it most improbable that the plaintiff would send rupees 551 in cash, in charge of an old man in a boat from Malda to Shahabad, when a hoondie could be obtained for the amount. For the above reasons I do not credit the evidence for the plaintiff, and I therefore reverse the decision of the sudder ameen, and decree the appeal with costs.

THE 25TH JULY 1848.

No. 188 of 1847.

*Appeal from a decision of Fuzloollah, Moonsiff of Beerungge, dated
21st May 1847.*

Bunjar, (Defendant,) Appellant,

versus

Kandoora Duffadar, (Plaintiff,) Respondent.

CLAIM, rupees 26-9-2, due on a bond for rupees 25, dated the 11th of Sawon 1251 B. S. The defendant pleads payment in full, viz. 4 rupees in Chyté 1251, and the balance on the 20th Maug 1252, as per receipt in full filed. The moonsiff decreed the case, overruling the evidence for the defendant, on the grounds that the plaintiff's writing did not correspond with the signature on the farogh ; that an attempt was made to compromise after this suit was instituted ; and that the asserted payment in 1252 was not entered on the bond according to its terms. The payment in 1251, which the plaintiff allows, is not entered on the bond. I cannot discover any great difference in the plaintiff's signature, before the moonsiff,

and that on the receipt in full, which is attested by four witnesses, including the writer, a measuring ameen, who probably was not more than a few days in the defendant's neighbourhood, and therefore not likely to have been searched for to assist in forgery after this suit was instituted. The fact of the defendant's having paid 4 rupees in the first year, is in favor of his having paid the balance in the following one, and rather against the plaintiff's story of the defendant's having offered to compromise, by paying the principal without interest or costs, after the suit was instituted. On the above grounds I reverse the moonsiff's decision, and decree the appeal with costs.

ZILLAH HOOGHLY.

PRESENT: F. W. RUSSELL, Esq., JUDGE.

THE 7TH JULY 1848.

Case No. 179 of 1848.

Appeal from the decision of Mahomud Allum, Moonsiff of Oolooberia, passed on the 19th day of April 1848.

Damodur Kanrar, Takoordoss Kanrar, and Prankysto Kanrar,
(Defendants,) Appellants,

versus

Ramjoy Doss and Sreenauth Doss, (Plaintiffs,) Respondents.

CLAIM for the reversal of a summary decision, passed under Regulation VII. of 1799, laid at Company's rupees thirty-eight, annas five, gundahs nineteen, cowries three, (Company's rupees 38-5-19-3.)

The papers of this case shew that the appellants preferred this appeal on the 22d day of May 1848, declaring that they would subsequently file their wujoohant, or grounds of appeal; but six weeks have elapsed without the appellants doing so, and they, the appellants, have neglected to proceed with their case, therefore I dismiss this appeal with costs, under the provisions of Act XXIX. of 1848.

THE 7TH JULY 1848.

Case No. 19 of 1847.

Appeal from the decision of James Reily, Esq., Principal Sudder Ameen of Hooghly, dated the 7th day of July 1847.

Prankysto Roy, (Defendant,) Appellant,

versus

Ramkumnye Banerjee, (Plaintiff,) Respondent.

Shamasoonderee Debea, Sokhee Debea, and Sonamonee Debea,
(Defendants,) Respondents.

CLAIM for the amount of a sum of money advanced on a hauth-chitta, or memorandum, with interest, laid at Company's rupees

two thousand, six hundred and thirty-seven, one gundah, (Company's rupees 2,637, 1 gundah.)

The papers in this case shew that the plaintiff had deposited the sum of a thousand rupees with one Goluck Chunder Roy, the father of the defendant, Prankysto Roy, on a hauthchitta, or memorandum, at an interest of one hundred and twenty rupees per annum; that Goluckchunder Roy had annually paid the interest agreed upon; that Goluckchunder Roy having subsequently died, a settlement of accounts took place between the plaintiff and the defendant, Prankysto Roy, when a balance appeared in favor of the plaintiff of the sum of Sicca rupees one thousand, six hundred, and twenty-two, annas four; that the defendant, Prankysto Roy, in consequence took back the former hauthchitta, or memorandum, and gave another in lieu of it, bearing the date of the 18th day of Assar 1241 B. S., thus taking the debt upon himself: that he, Prankysto Roy, had accordingly paid rupees five hundred and nine, on account of interest up to the 18th day of Chyte 1251 B. S., and on failure to defray the balance, either the principal money, or the interest, the plaintiff filed a suit against him for the sum of Sicca rupees three thousand, two hundred, and forty-four, annas eight, or Company's rupees three thousand, four hundred and sixty, annas twelve, gundahs sixteen, that is to say, principal money Sicca rupees one thousand, six hundred, and twenty-two, annas four, and Sicca rupees one thousand, six hundred and twenty-two, annas four, on account of the interest.

The defendants, Sokhee Debea, Sonamonee Debea, and Shama-soonderee Debea, in their answer, state that their ancestor, Goluckchunder Roy, left three sons, Biprodoss Roy, Gooroodoss Roy, and Prankysto Roy; that they, the said defendants, are the heirs of the late Biprodoss Roy and Gooroodoss Roy; that they, the defendants, and Prankysto Roy, separated themselves one family from the other, in the year 1242 B. S., and have since lived as two separate and divided Hindoo families: that on the partition of the property left by the late Goluckchunder Roy, the demand of the plaintiff was to have been satisfied and liquidated by the defendant, Prankysto Roy, and they, the defendants aforesaid, were not in any way connected in this matter.

The defendant, Prankysto Roy, in his answer, states that, of the sum of Sicca rupees one thousand, six hundred, and twenty-two, annas four, a moiety, or the sum of Sicca rupees six hundred, and twenty-two, annas four, had been paid to the plaintiff, on the 30th day of Bysak 1246 B. S., and again on the 20th day of Maug 1246 B. S., the sum of Company's rupees one thousand and sixty-six, annas ten, gundahs eight, was also in like manner paid to the plaintiff, and for each of which sums of money so paid, he, the defendant, holds a separate receipt from the plaintiff.

James Reily, Esq., the principal sudder ameen, decreed the case against the defendant, Prankysto Roy, to the extent of Company's rupees two thousand, two hundred, and fifty-four, annas two, gundah one, for the reasons recorded in his decision.

In this case, it appears to me imperative that the evidence of each of the several remaining witnesses to the receipt, filed by the appellant, should be taken, and the case re-tried. I decree this appeal, and reverse the decision passed by James Reily, Esq., the principal sudder ameen, on the 7th day of July 1847, and order that the case be remanded to the said principal sudder ameen, James Reily, Esq., with instructions to restore the case to its original number on his file, and, having noticed the points stated in this decree, to re-hear and re-try the case.

Costs to be paid by each party respectively for the present, and ultimately by the losing party.

The value of the stamp upon the petition of appeal to be refunded to the appellant.

THE 7TH JULY 1848.

Case No. 20 of 1847.

Appeal from the decision of James Reily, Esq., Principal Sudder Ameen of Hooghly, dated the 7th day of July 1847.

Ramkunnye Banerjee, (Plaintiff,) Appellant,

versus

Prankysto Roy, Shamasoonduree Debea, and Sonamonee Debea, (Defendants,) Respondents.

CLAIM for the balance of a sum of money advanced on a hauthchitta, or memorandum, laid at Company's rupees one thousand, two hundred and six, annas ten, gundahs fifteen, including interest.

The plaint sets forth that the plaintiff had deposited the sum of one thousand rupees with one Golukchunder Roy, the father of the defendant, Prankysto Roy, on a hauthchitta, or memorandum, at an interest of rupees one hundred and twenty per annum; that Golukchunder Roy had regularly paid every year the interest agreed upon; that the said Golukchunder Roy having subsequently died, as settlement of accounts took place between the plaintiff and the defendant, Prankysto Roy, at which settlement a balance of Sicca rupees one thousand, six hundred, and twenty-two, annas four, was found to be due to, and in consequence was struck in favor of the plaintiff; that the defendant, Prankysto Roy, then took back the former memorandum, or hauthchitta, and gave another hauthchitta, or memorandum,

(in lieu of the one which had been deposited by his father,) dated the 18th day of Assar 1241 B. S., thus taking the debt upon himself, and accordingly he, Prankysto Roy, paid rupees five hundred and nine, on account of the interest up to the 18th day of Chyete 1251 B. S., and failing to pay the balance, that is to say, either the principal money, or the interest, the plaintiff sued him, the defendant, for the sum of Sicca rupees three thousand, two hundred, and forty-four, and eight annas, or Company's rupees three thousand, four hundred, and sixty, twelve annas, and sixteen gundahs, that is to say, one thousand, six hundred and twenty-two Sicca rupees, four annas, principal money, and one thousand, six hundred and twenty-two Sicca rupees, four annas, for interest accruing thereon.

The defendants, Sokhee Debea, Sonamonee Debea, and Shama-soondurce Debea, in their answer, state that their ancestor, Golukchunder Roy, died leaving three sons, that is to say, Bipprodoss Roy, Gooroodoss Roy, and Prankysto Roy; that they, the defendants, are the heirs of the late Bipprodoss Roy and Gooroodoss Roy; and that they, the defendants, and Prankysto Roy, in the year 1242 B. S. separated themselves each family from the other, and had since resided as two separate and divided Hindoo families; that on the partition of the property left by the late Golukchunder Roy, the demand of the plaintiff was to have been satisfied and liquidated by the defendant, Prankysto Roy; and that they, the defendants, were not in any way connected with this matter.

The defendant, Prankysto Roy, in his answer, declares that of the sum of Sicca rupees one thousand, six hundred, and twenty-two, annas four, he had paid to the plaintiff the sum of Sicca rupees six hundred and twenty-two, annas four, on the 13th day of Bysak 1246 B. S., and again on the 20th day of Maug of the same year, a further sum of Company's rupees one thousand and sixty-six, annas ten, gundahs eight, and for each of which sums so paid, he, the defendant, holds a separate receipt from the plaintiff.

James Reily, Esq., the principal sudder ameen, decreed the case against the defendant, Prankysto Roy, to the extent of the sum of two thousand, two hundred, and fifty-four rupees, annas two, gundah one, on the grounds set forth in his decision.

The respondent, Prankysto Roy, having likewise appealed under No. 19 from the aforesaid decision of the principal sudder ameen, Mr. James Reily, passed on the 7th day of July 1847, A. D., which decision has this day been reversed, and the original case remanded for re-trial, hence it is not necessary to pass any further order on this appeal, therefore order this appeal to be struck off the file.

All costs of this court to be paid by the appellant.

THE 7TH JULY 1848.

Case No. 24 of 1847.

Appeal from the decision of Moulvee Syud Oosman Ali, late Additional Principal Sudder Ameen of Hooghly, passed on the 30th day of September 1847.

Golukchunder Chatterjee, (Defendant,) Appellant,

versus

Radhajeetun Mustofee, (Plaintiff,) Respondent.

CLAIM for costs of suit awarded by the late additional principal sudder ameen, Syud Oosman Ali, laid at Company's rupees one hundred and ninety-nine, anna one, gundahs twelve, (Company's rupees 199-1-12.)

The papers in this case shew that the defendant, Golukchunder Chatterjee, in the execution of a decree given under No. 32, caused the attachment of lot Damorgacha and talook Inchoora, the hereditary property of the plaintiff and two other shareholders, alleging the same to have been the property of Kasheessur Mustofee, on which the plaintiff and Shobbessur Mustofee preferred their claims, which were rejected in accordance with the Circular Order of the Court of Sudder Dewanny Adawlut, dated the 10th day of June 1842, in consequence the plaintiff instituted this suit for the release of his share, that is to say, for the release of five annas, six gundahs, two cowrees, and two krants of the property from attachment, and for possession of the same, calculated at Company's rupees one thousand, two hundred and seventy-two, annas thirteen, gundahs ten.

The defendant, Golukchunder Chatterjee, declares in his answer, that, in the execution of the decree, No. 32, the claims preferred by the plaintiff, and his brother, having been rejected, he, the defendant, having discovered that the plaintiff and his brother had a share in the attached property, he accordingly filed a petition in the decreecase of the suit by the plaintiff, praying that the respective shares of the plaintiff and his brother be released from attachment, and the remaining share of five annas, six gundahs, two cowrees, and two krants, belonging to Kashesur Mustofee, be sold in satisfaction of the said decree, thus shewing that the plaintiff had sued him unjustly.

The late additional principal sudder ameen, Syud Oosman Ali, in this case ordered "that the case be decreed tukfeef," or less decree, and the plaintiff to realize the costs of suit with interest from the defendant, Golukchunder Chatterjee.

The term "tukfeef decree," used by the late additional principal sudder ameen, Syud Oosman Ali, being vague and undefined, and it is not possible to make out exactly what he, the late additional principal sudder ameen, means; besides the late additional principal sudder ameen did not institute any enquiry as to whether the plaint, or the petition alluded to by the defendant, was first filed; hence I consider the decision of the late additional principal sudder ameen, Syud Oosman Ali, passed on the 30th day of September 1847, incomplete. Therefore I decree this appeal, and reverse the decision of the late additional principal sudder ameen, Syud Oosman Ali, passed on the 30th day of September 1847, and order that the case be remanded to the principal sudder ameen for re-trial, with instructions to restore the case to its original number on his file, and, having supplied all omissions, to re-try the case.

Costs to be paid for the present by each party respectively, and ultimately by the losing party.

The value of the stamp upon the petition of appeal to be refunded to the appellant.

THE 7TH JULY 1848.

CASE NO. 25 OF 1847.

Appeal from the decision of James Reily, Esq., Principal Sudder Ameen of Hooghly, passed on the 12th day of August 1847.

Obhoychurn Mookerjee, (Defendant,) Appellant,

versus

Gowreechurn Mookerjee, for self, and as guardian of Othoolchunder Mookerjee and Poornochunder Mookerjee, minor sons of the late Doorgachurn Mookerjee, (Plaintiff,) Respondent.

CLAIM for the rent paid on behalf of the other shareholders to prevent the estate being sold, including interest, laid at Company's rupees four thousand and six, annas fifteen, gundas nine, (Company's rupees 4,006-15-9.)

The plaint sets forth that lots Bungalpole, Sonatholah, and Pancharool were the joint undivided talook of the plaintiff, Gowreechurn Mookerjee, the defendant, Obhoychurn Mookerjee, and their late brother, Doorgachurn Mookerjee: the defendant, Obhoychurn Mookerjee, having failed to pay his share of the rent due

for the first and second months of the year 1250 B. S. ; the plaintiff, in order to prevent the estate being sold, not only paid the rent due from himself and from the minor sons of his late brother, Doorgachurn Mookerjee, but also the rent which was due by the defendant, Obhoychurn Mookerjee, amounting in all to the sum of rupees eight thousand, five hundred and nineteen, annas twelve, gundahs six, which, together with the interest, amounts to rupees nine thousand, one hundred and nine, annas nine, gundas six, of which the defendant Obhoychurn Mookerjee's share amounts to rupees three thousand and thirty-six, annas eight, gundahs six ; that in consequence of the defendant, Obhoychurn Mookerjee, failing to pay the said amount of his share, the plaintiff instituted this suit.

The defendant, Obhoychurn Mookerjee, in his answer, contends that the late Doorgachurn Mookerjee died without a will ; that in consequence of the plaintiff having obtained a probate, alleging there was a will, he, the defendant, has filed a suit in the Supreme Court to cancel the same ; and until that case be disposed of, the merits of this case cannot be decided ; that the plaintiff was in possession of the said talook in 1250 B. S., and realized the rents of it ; that the plaintiff did not pay the revenue of the Government out of his own money ; that all the money of the shareholders was in the hands of the plaintiff, the property being undivided.

James Reily, Esq., decreed the case on the grounds set forth in his decision.

In this case two ameens were deputed to make local enquiries, in order to set at rest the various objections offered by the defendants regarding the wasilaut, or mesne profits, from the decision passed by the principal sudder ameen. It appears that the reports of the ameens on those particular points, that is to say, regarding the wasilaut or mesne profits, are not by any means complete and altogether satisfactory. I therefore consider the decision of the principal sudder ameen, on this point, defective, and therefore I decree this appeal, and reverse the decision of the principal sudder ameen, James Reily, Esq., passed on the 12th day of August 1847, and direct that the case be remanded to him for re-trial, with instructions to restore the case to its original number on his file, and, having caused a local investigation to be instituted, touching and regarding the wasilaut, or mesne profits, through a mokoruree, or established ameen, to re-try the case.

Costs for the present to be paid by each party respectively, and ultimately by the losing party.

The value of the stamp upon the petition of appeal, to be refunded to the appellants.

THE 13TH JULY 1848.

Case No. 9 of 1847.

Appeal from the decision of James Reily, Esq., Principal Sudder Ameen of Hooghly, dated the 20th day of April 1847.

Rajenderchunder Neugee and Kistokishore Neugee, (Defendants,) Appellants,

versus "

Badam Beebee, for herself, and as the guardian for Dhone Komaree, (Plaintiff,) and Bishonauth Soor, (Defendant,) Respondents.

CLAIM for the arrears of rent including interest, laid at rupees six hundred and fifty, annas two, pie one, (Company's rupees 650-2-1.)

The plaint sets forth that the plaintiffs had let in farm to one Kistomohun Sein and others, under a perpetual lease, five hundred beegahs of their ancestral lakhiraj rent-free dewuttur land, situated in the villages Bishonauthpore, &c., at an annual rent of Sicca rupees seven hundred and two; that the said Kistomohun Sein and others had given distinct and separate kuboolleuts, or acknowledgments to each of the several shareholders, agreeing to pay to each of the several shareholders, the sum of rupees two hundred and thirty-four, on account of the rent; that the plaintiff instituted a suit, No. 358, against Kistomohun Sein and others, for the arrears of the rent due for the years 1242 B. S. and 1243 B. S., and obtained a decree, in the execution of which, No. 19, the property of the said Kistomohun Sein and others, having been ordered to be sold in separate lots, the shareholder, Brindabunchunder Baboo, considering the rent would be reduced by the sale of the property in separate lots, filed a suit, No. 332, praying that the said property might be sold in one lot, and obtained a decree, in the execution of which the said property was sold in one lot in the month of Aghun, in the year 1248 B. S., and the said lot was purchased by one Rossickchunder Neugee for one hundred and seventy rupees, at his death his heirs, Rajenderchunder Neugee and Kistokishore Neugee, continued in possession of the said property, and failing to pay the rent due for the year 1248 B. S., the plaintiff instituted a suit, No. 1576, under Regulation VII. of 1799, for her share of the said rent, and got a decree, but as real property cannot be sold in satisfaction of a decree passed under Regulation VII. of 1799 the plaintiff has therefore instituted a

suit, for her share of the rent from the year 1248 B. S. to the year 1251 B. S.,	Rupees	998	6	4
Interest on the above sum,	"	281	10	7
Costs of suit under Regulation VII. of 1799,	"	7	0	0

Total rupees one thousand, two hundred,
and eighty-seven, gundahs eleven, „ 1,287 0 11

The defendants, Kistokishore Neugee and Rajenderchunder Neugee, in their answer, state that, on the 11th day of Aghun in the year 1248 B. S., Kistokishore Neugee and Rossickchunder Neugee, the father of the defendant, Rajenderchunder Neugee, purchased the said property and continued in the possession of it, but finding the mahaul to be a petty one, situated far distant from their residence and attended with much expense, they sold the same to one Bishonauth Soor, on the 2nd day of Bysack in the year 1250 B. S., for rupees four hundred and seventy-five; that the said Bishonauth is now in possession of the property aforesaid; that the plaintiff, being aware of these circumstances, omitted to include him, the said Bishonauth Soor, as a defendant in this case, and now most unjustly demands the whole of the rent from them, the defendants.

Bishonauth Soor, having been subsequently made a defendant by a supplementary plaint, filed his answer, which answer supports those, that is to say, the answers given by the other two defendants, that is to say, by Kistokishore Neugee and Rajenderchunder Neugee.

● The principal sudder ameen, Mr. James Reily, decreed the case as follows, that the defendants, Kistokishore Neugee and Rajenderchunder Neugee, are to pay to the plaintiff the amount of the rent due from Aghun of the year 1248 B. S. to the end of the year 1249 B. S., that is to say, the rent in money is the sum of five hundred and thirty-six rupees, annas nine, and gundahs seven; and that they, that is to say, the two defendants, Kistokishore Neugee and Rajenderchunder Neugee aforesaid, together with Bishonauth Soor, paid the rent due for the years 1250 and 1251 B. S., that is to say, the rent in money amounts to the sum of rupees six hundred and fifty, annas two, gundah one, with interest, on the amount decreed and on the costs to the day of payment.

The appellants, being dissatisfied with the orders of the principal sudder ameen, as regards the sum of six hundred and fifty rupees, annas two, pie one, (Company's rupees 650-2-1,) decreed against them, instead of against Bishonauth Soor, preferred this appeal.

The principal sudder ameen states that Bishonauth Soor is in possession of the property, but the witnesses for each party sup-

port the statements made by their respective principals, hence I consider a local enquiry to be absolutely necessary to ascertain whether Bishonauth Soor was actually in possession of the property in question, during the years 1250 and 1251 B. S., and therefore decree this appeal, and reverse that part of the decision of the principal sudder ameen, James Reily, Esq., passed on the 20th day of April 1847, which directs that the plaintiff realize from the defendants, Rajenderchunder Neugee and Kistokishore Neugee and Bishonauth Soor, the rent due for the years 1250 and 1251 B. S., that is to say, the sum of Company's rupees six hundred and fifty, annas two, pie one, with interest, and direct the case be remanded to the principal sudder ameen for re-trial, with instructions to restore the case to its original number on his file, and, having noticed the point to which allusion is made in the decree, to re-try the case.

Costs to be paid for the present by each party respectively, and ultimately by the losing party.

The value of the stamp upon the petition of appeal to be refunded to the appellant.

THE 13TH JULY 1848.

Case No. 5 of 1847.

Appeal from the decision of James Reily, Esq., Principal Sudder Ameen of Hooghly, dated the 14th day of January 1847.

Kistokishore Neugee and Rajenderchunder Neugee, (Defendants,) Appellants, ●

versus

Brindabundchunder Baboo, (Plaintiff,) Respondent.

CLAIM, for the arrears of rent, laid at Company's rupees six hundred and sixty-four, annas four.

The plaint sets forth that the plaintiff possesses five hundred beegahs of hereditary dewuttur lakhiraj, or rent-free land in Bishonauthpore and three other mouzals, which he let under a perpetual lease to one Kistomohun Sein and others, at an annual rent of seven hundred and two Sicca rupees; that the renters gave a separate engagement, one to each of the three shareholders of the said five hundred beegahs of hereditary dewuttur lakhiraj, or rent-free land, that is to say, one engagement was given to himself, one engagement to Badam Beebee, and one engagement to the late Hemkoomaree Beebee, acknowledging they were to pay each of the three shareholders the sum of Sicca rupees two hundred and thirty-four, on account of rent; that they accordingly continued to pay the stipulated rent, but subsequently one of the shareholders, Badam Beebee, instituted a suit against Kistomohun

Sein and the others, for arrears of rent due to her for her share of the property, that is to say, the share of five annas, six gundahs, two cowrees, and two kraunts, rupees 5-6-2-2, and she, the said Badam Beebee, obtained a decree, in the execution of which the mokororee jumma was sold in separate lots; on this the other two shareholders, that is to say, Bindrabunchunder Baboo and Hemkoomaree Beebee, considering that the rent of the property might be reduced by the sale of it, the said mokororee jumma, in separate lots, instituted a suit, praying that the mokororee jumma might be sold in one lot and they obtained a decree: that on the 11th day of Aghun 1248 B. S., the said mokororee jumma, that is to say, the seven hundred and two rupees of rent, was sold in one lot for the sum of Company's rupees one hundred and seventy, and the said lot was purchased by Rossickchunder Neugee, (who died after he had been put in possession of the property,) and his heirs Kistokishore Neugee and Rajenderchunder Neugee still hold possession of it; that the shareholder, Hemkoomaree Beebee, having died, her share according to the shaster reverted to the plaintiff, by which proceeding, he, the plaintiff, became the possessor of two shares, of one-third each of the property, that is to say, he, the plaintiff, became the proprietor of a ten annas, thirteen gundahs, one cowree, and one kraunt share: the plaintiff instituted this suit, agreeably to the kubooleents of the former mokororeedars, Kistomohun Sein and others, against the defendants, for the rent due on the two shares from the 11th day of Aghun 1248 B. S., to the month of Chyte 1250 B. S., for the sum of Sicca rupees one thousand, one hundred, and seventy-six, being the principal money and interest accruing on the same, to the amount of Sicca rupees three hundred and twenty, nine annas, and ten gundas, making a total of Sicca rupees fourteen hundred and ninety six, nine annas and ten gundahs, or Company's rupees one thousand, five hundred, and ninety-six, four annas and nine pie.

The defendants, Kistokishore Neugee and Rajenderchunder Neugee, in their answer, contend that, on the 11th day of Aghun 1248 B. S., Kistokishore Neugee, and Rossickchunder Neugee, the father of Rajenderchunder Neugee, purchased the mokororee jumma, or the rent on the perpetual lease, and remained in possession; that the property in dispute being a petty mohaul, attended with much expense and situated at a distance from their residence, they consequently sold the mokororee jumma to one Bishonauth Soor, for the sum of rupees four hundred and seventy-five, on the 2d day of Bysak 1250 B. S., under a deed of sale, and that Bishonauth Soor was accordingly installed in possession, and the plaintiff, being aware of the above circumstance, that is to say, aware that the mokororee jumma was sold to

Bishonauth Soor, has instituted this suit against them for the whole amount, without including Bishonauth Soor, as a defendant, &c.

The plaintiff did subsequently make Bishonauth Soor a defendant in the case by a supplementary plaint, but notwithstanding the issue of the usual notice and proclamation, Bishonauth Soor has neither appeared nor filed any reason.

The principal sudder ameen, James Reily, Esq., decreed the case on the grounds recorded in his decision, and he ordered that the plaintiff be paid by the said Rajenderchunder Neugee and Kistokishore Neugee, the rent from the 11th day of Aghun 1248 B. S. to the 2d day of Bysak 1250 B. S., amounting to rupees one thousand, one hundred and twenty-six, annas two, including interest, and that the plaintiff recover the rent from the 3d day of Bysak 1250 to the end of that year, with interest, that is to say, the sum of rupees six hundred and sixty-four, annas four, from Rajenderchunder Neugee and Kistokishore Neugee and Bishonath Soor conjointly: should they fail to obey the order, then the estate which has fallen into arrear shall be sold, the plaintiff shall be entitled to interest on the amount decreed and the costs to the day of payment, the defendants paying proportionate costs.

The appellants, being dissatisfied with the decision of the principal sudder ameen, as regards the sum of rupees six hundred and sixty-four, annas four, have preferred this appeal.

The principal sudder ameen, James Reily, Esq., states that "there is reason however to believe that Bishonauth Soor is in possession." I consider a local investigation on this point is necessary as to whether Bishonauth Soor was actually in possession of the property, in the year 1250 B. S. The principal sudder ameen having omitted to set at rest this point and objection, his decision appears to me incomplete. I therefore decree this appeal, and reverse that part of the decision of the principal sudder ameen passed on the 14th day of January 1847, which directs that the plaintiff receive the rent from the 3d day of Bysak 1250 B. S. to the end of that year, with interest, that is to say, the sum of Company's rupees six hundred and sixty-four, annas four, from Rajenderchunder Neugee and Kistokishore Neugee and Bishonauth Soor conjointly, and order that the case be sent back to the said principal sudder ameen for re-trial, with instructions to restore the case to its original number on his file, and, in reference to the point noticed in this decree, to re-try the case.

Costs are to be paid for the present by each party respectively, and ultimately by the losing party.

The value of the stamp upon the petition of appeal, to be refunded to the appellant.

THE 13TH JULY 1848.

Case No. 3 of 1847.

Appeal from the decision of Pundit Sreeram Turkolunkar, Sudder Ameen of Hooghly, dated the 6th day of May 1847.

Kistokishore Neugee and Rajenderchunder Neugee, (Plaintiffs,) Appellants,

versus

Bindrabunchunder Baboo, Badam Beebee, and Bishonauth Soor, (Defendants,) Respondents.

CLAIM, to have an order reversed which had been passed under Regulation VII. of 1799, laid at Company's rupees five hundred and sixty-seven, annas two, gundah one, cowree one, (Company's rupees 567-2-1-1.)

The plaint sets forth that Bindrabunchunder Baboo, Badam Beebee, and the late Hemkoomaree Beebee farmed five hundred (500) beegahs of their hereditary dewuttur lakhiraj (rent-free) land, situated in mouzals Chandchuck, &c., to one Kistomohun Sein and others, under a perpetual lease, and at an annual rent of rupees seven hundred and two, (rupees 702); that in satisfaction of a decree against the said Kistomohun Sein and others, their rights and interests in the said land were sold, and purchased by the late Rossickchunder Neugee, (the father of the plaintiff, Rajenderchunder Neugee,) and Kistokishore Neugee, on the 11th day of Aghun 1248 B. S.; that the said Rossickchunder Neugee and Kistokishore Neugee subsequently sold their rights and interests in the property in dispute, to the defendant Bishonauth Soor, who at present holds the property in his possession, notwithstanding which, Bindrabunchunder Baboo filed a suit under Regulation VII. of 1799, against the plaintiffs, instead of against the defendant Bishonauth Soor, for the arrears of rent due for the year 1251 B. S., that is to say, for the sum of rupees five hundred and forty, annas nine, (rupees 540-9,) for the land allotted to his share and that of the late Hemkoomaree Beebee, and obtained a decree, in consequence of which the plaintiff instituted this suit to contest the summary award.

The defendant, Bindrabunchunder Baboo, in his answer, contends that the plaintiffs are in possession of the land in dispute, and that if the fact of the statement of the plaintiffs of their having sold the property in dispute to the defendant, Bishonauth Soor, is true, there would certainly have been a mutation of names in the scrihsita of the kutcherry of the zumeendar, which is not the case, for no mutation of names has taken place, that he, the defendant, has filed a suit against the plaintiffs in the court of the principal sudder ameen, under No. 8, for the arrears of rent due by them from the year 1248 B. S. to the year 1250 B. S., that

he likewise filed a suit, No. 796, under Regulation VII. of 1799, against the plaintiffs, for the arrears of rent due for the year 1251 B. S. and obtained a decree.

The defendant Bishonauth Soor, in his answer, supports the plaint.

The sudder ameen of Hooghly, Pundit Sreeram Turkolunkar, dismissed the case on the grounds that, until a mutation of the names takes place in the serishta of the zemindar, no one but and except the plaintiffs can be made accountable for the rent of the property in dispute, under a summary decision, &c.

I consider the decision of the sudder ameen, Pundit Sreeram Turkolunkar, altogether incomplete and illegal, for the following reasons.

First. In suits for the reversal of awards passed under Regulation VII. of 1799, the *fysalla*, or decision of that case should have been called for and perused in accordance with the spirit of Construction No. 1028, this the sudder ameen has omitted to do.

Secondly. The sudder ameen did not call upon the plaintiff to file his exhibits, or to produce his witnesses.

Thirdly. The claim of the plaintiff is for the reversal of the award passed on the 30th day of June 1845, under Regulation VII. of 1799, but the sudder ameen, instead of confirming that award or reversing it, as prayed by the plaintiff, confirms an award passed on the 2d day of July 1845, under the said Regulation.

I therefore decree this appeal, and reverse the decision passed by Pundit Sreeram Turkolunkar, on the 6th day of May 1847, and order that the case be remanded to the sudder ameen, with instructions to restore the case to its original number on his file and then re-try the case.

Costs for the present are to be paid by each party respectively, and ultimately by the losing party.

The value of the stamp upon the petition appeal, to be refunded to the appellant.

THE 19TH JULY 1848.

Case No. 45 of 1848.

Appeal from the decision of Baboo Tarukchunder Ghose, Moon-siff of Mahanaut, dated the 3d day of January 1848.

Mirza Ekram Ali, (Plaintiff,) Appellant,

" *versus*

Gujraj Singh, (Defendant,) Respondent.

CLAIM, for the recovery of a sum of money advanced on loan, including interest, laid at Company's rupees one hundred and forty-five, annas seven, gundahs eleven, cowrees two, (Company's rupees 145-7-11-2.)

The papers of this case shew that the defendant had taken on loan the sum of Company's rupees one hundred and twenty from the plaintiff, upon a bond dated the 20th day of Assin 1252, and on failure of repayment, the plaintiff instituted this suit against him, including interest.

The defendant in his answer denies the debt and states that the bond in question is a fabricated instrument.

The moonsiff dismissed the case on the grounds that the fact of enmity between the plaintiff and his witnesses against the defendant, had been proved, and that the bond bore a most suspicious appearance.

I do not see any sound reason on which to disturb the decision of the moonsiff passed on the 3d day of January 1848. I therefore dismiss the appeal.

Costs to be paid by each party respectively as the respondent appeared unsummoned.

THE 19TH JULY 1848.

Case No. 33 of 1848.

Appeal from the decision of Moulvee Syud Israr Ali, Moonsiff of Keerpooy, dated the 31st day of December 1847.

Horee Kaliudee, (one of the Defendants,) Appellant,

versus

Horee Santra, (Plaintiff,) Respondent.

CLAIM for the recovery of a sum of money advanced on a loan, laid at Company's rupees fifteen, (Company's rupees 15.)

It appears from the papers that the defendant took upon loan the sum of Company's rupees fifteen, upon a bond dated the 18th day of Bysak 1251 B. S., and failing to repay the same, the plaintiff instituted this suit.

The moonsiff decreed the case *ex parte* on the grounds set forth in his decision.

The appellant in his appeal urges that he, as the defendant in the case, had not been served with the usual notice and proclamation, and that the witnesses produced by the plaintiff to prove the serving of the said processes are not residents of the neighbourhood, in which he, the defendant, dwells, and that the plaintiff has sued him from enmity on the strength of a fabricated document.

From the papers of the original case it appears that the defendant was not served with the proclamation, in accordance with Section 22, Regulation XXIII. of 1814, and Construction No. 775,

hence the decision of the moonsiff is illegal and incomplete. I therefore decree this appeal, and reverse the decision of the moonsiff passed on the 31st day of December 1847, and order that the case be remanded to the said moonsiff for re-trial, with instructions to restore the case to its original number on his file, and, having supplied the omission noticed in this decree, to re-try the case.

Costs to be paid for the present by each party respectively, and ultimately by the losing party.

The value of the stamp upon the petition of appeal, to be refunded to the appellants.

THE 19TH JULY 1848.

Case No. 27 of 1848.

Appeal from the decision of Baboo Denouauth Bose, Moonsiff of Dwarhatta, dated the 29th day of December 1847.

Anundo Mundle, (Defendant,) Appellant,

versus

Lutchmun Pandeh, (Plaintiff,) Respondent.

CLAIM for the recovery of a sum of money advanced on loan with interest, laid at Company's rupees forty-one, annas thirteen, gundahs two, (Company's rupees 41-13-2.)

The papers of this case show that the defendant had taken on loan the sum of rupees twenty-three from the plaintiff, upon a bond dated the 29th day Assin 1251 B. S., and upon his, the defendant's, failing to discharge the debt, the plaintiff instituted this suit, including seven rupees, annas two, gundahs two, on account of interest.

The defendant, in his answer, denies the debt and states that the plaintiff had sued him from enmity, on the strength of a fabricated document.

The moonsiff decreed the case to the extent of forty-one rupees, thirteen annas, and two gundahs, on the grounds set forth in his decision.

The bond filed by the plaintiff bears so suspicious an appearance that I am unable to believe it to be genuine and authentic, moreover the witnesses, who were produced to attest to the authenticity of the document, did not reside in the neighbourhood of the defendant, but were brought from other villages far distant from the place of the transaction, therefore no dependance whatever can be placed on their evidence. I therefore decree the appeal, and reverse the decision of the moonsiff of Dwarhatta, passed on the 29th day of December 1847. Costs of both courts to be paid by the respondent.

THE 19TH JULY 1848.

Case No. 47 of 1848.

Appeal from the decision of Moulvee Syud Israr Ali, Moonsiff of Keerpoy, dated the 20th day of January 1848.

Sheikh Bheekoo and Sheikh Husnool, (Defendants,) Appellants,
versus

Singar Beebee, (Plaintiff,) Respondent.

CLAIM for the value of two bullocks, laid at Company's rupees sixteen.

The papers in this case shew that the defendants having, on the 20th day of Bysak 1252 B. S., forcibly taken and carried away two bullocks from the house of the plaintiff, and having caused much damage by the loss of certain plantain trees, the plaintiff filed this suit against the defendants, for the sum of Company's rupees thirty-two, that is to say, rupees twenty-four being the value of the said bullocks, and eight rupees being the amount of loss to the plaintiff for the plantain trees and the value of the ground.

The defendant, Sheikh Bheekhoo, in his answer, disavows the demand of the plaintiff, and he declares that he, the defendant, had purchased the said bullocks from the plaintiff, for the sum of Company's rupees eleven, annas four, in the presence of certain respectable witnesses.

The answer of the defendant, Sheikh Husnool, supports that of the defendant, Sheikh Bheekhoo.

The moonsiff decreed the case to the extent of rupees sixteen against the defendants exclusive of damage, on the grounds set forth in his decision.

I do not see any sound reason on which to disturb the decision of the moonsiff, passed on the 20th day of January 1848. I therefore dismiss this appeal with costs.

THE 19TH JULY 1848.

Case No. 193 of 1848.

Appeal from the decision of Muhummud Allum, Moonsiff of Oolooberria, dated the 24th day of April 1848.

Oolash alias Shuhuroolla Mullik, and Sheikh Beichoo Noorbaf,
(Defendants,) Appellants,

versus

Sheikh Subkuttoola, (Plaintiff,) Respondent.

CLAIM for damages sustained by the loss of paddy and straw, laid at Company's rupees one hundred and thirty-eight, (Company's rupees 138.)

The appellants preferred their appeal on the 29th day of May 1848, declaring it to be their intention subsequently to file their reasons and grounds for making this appeal. The period of more than six weeks has elapsed since the appellants preferred their appeal, and during that time, that is to say, during the period of six weeks, they have neglected to proceed or take any steps to forward their case. I therefore dismiss this appeal with costs, under the provisions of Act XXIX. of 1841.

THE 19TH JULY 1848.

Case No. 182 of 1848.

Appeal from the decision of Muhummud Allum, Moonsiff of Ooloberria, passed on the 18th day of April 1848.

Kummul Ghose, (Defendant,) Appellant,

versus

Horodoss Chatterjee, (Plaintiff,) Respondent.

CLAIM for the arrears of rent, calculated at rupees eight, annas nine, gundahs twelve, (Company's rupees 8-9-12.)

The appellant preferred this appeal on the 25th day of May 1848, stating that it was his intention subsequently to file his reasons, or grounds for so doing. The period of more than six weeks has elapsed since the appellant preferred the appeal; and during that time, that is to say, during the period of six weeks, he has not proceeded with his case. Therefore I dismiss this appeal with costs, under the provisions of Act XXIX. of 1841.

THE 19TH JULY 1848.

Case No. 46 of 1848.

Appeal from the decision of Baboo Doorgapersaud Ghose, Moonsiff of Nya Serai, dated the 21st day of January 1848.

Ramchunder Ghose Mundle, (Plaintiff,) Appellant,

versus

Ramdhone Ghose, Neecheeram Ghose, and Ramtunoo Ghose, (Defendants,) Respondents.

CLAIM for the recovery of a sum of money advanced on loan including interest, laid at Company's rupees sixty-three, annas thirteen, gundahs two, cowrees two.

The plaint sets forth that the defendants had taken upon loan the sum of rupees sixty from the plaintiff, upon a bond dated the 20th day of Srabun 1249 B. S., the accruing interest thereupon amounted to Company's rupees thirty-six, annas thirteen, gundahs two, cowrees two, thus making a total of Company's rupees ninety-six, annas thirteen, gundahs two, cowrees two, of which sum the defendants repaid in liquidation the sum of Company's rupees thirty-three, and in failure of the payment of the balance, the plaintiff instituted this suit.

The defendants, in their answer, deny the debt, and state the bond in question is a fabricated instrument.

The moonsiff dismissed the case on the grounds set forth in his decision.

I do not see any sound reason on which to disturb the decision of the moonsiff, passed on the 21st day of January 1848 : therefore I dismiss the appeal with costs.

THE 21ST JULY 1848.

Case No. 78 of 1848.

Appeal from the decision of Baboo Denonath Bose, Moonsiff of Dwarhatta, dated the 14th day February 1848.

Rajoo Paul. (Defendant,) Appellant,

versus

Deenobundoo Roy Talookdar, (Plaintiff,) Respondent.

CLAIM for arrears of rent with interest, laid at Company's rupees one hundred and thirteen, annas fifteen, gundahs three, (Company's rupees 113-15-3.)

The papers of this case shew that the defendant holds twenty-two beegahs, two cottahs and half a cottah of land, in the village Dabypore, at an annual rent of rupees seventy-five, annas three, together with a fishery within the village of Ryeckuck, on an annual rent of rupees fifteen, annas nine, gundahs ten; that after deducting the sum received in part payment of the rent due for the year 1253 B. S., there remained unpaid a balance amounting to the sum of seventy-one rupees, two annas, and sixteen gundahs, which, with the rent due for the year 1254 B. S. up to the month of Assar, that is to say, the sum of rupees twenty-two, annas fourteen, gundahs thirteen, making a total sum of rupees ninety-four, anna one, gundahs nine, the defendant failing to pay the amount so due, the plaintiff instituted this suit.

The defendant, in his answer, states that he pays an annual rent of rupees fifty-seven, annas six, gundahs nine, for lands, &c., held in his own name and that of other persons within the village of Dabypore and Ryechuck, which rent he, the defendant, has regularly paid, and has received receipts for the same.

The moonsiff having decreed the case, the appellant preferred this appeal.

The plaintiff declares that the defendant rented a fishery (julkur) in Ryechuck; but the defendant in his wujoohaut, or grounds for appeal, declares the julkur (fishery) called julkur Bhairee, is situated within the villages Dabypore and Ryechuck; hence it was necessary for the moonsiff to have ascertained whether there are two fisheries or one, and also whether there is a separate and different julkur (fishery) in Ryechuck. To settle these points I consider that the case should be remanded for re-trial. Therefore I decree this appeal, and reverse the decision passed by the moonsiff of Dwarhatta, on the 14th day of February 1848, and I direct that the case be remanded to the said moonsiff, with instructions to restore the case to its original number on his file, and re-hear the case.

Costs to be paid for the present by each party respectively, and ultimately by the losing party.

The value of the stamp upon the petition of appeal is to be refunded to the appellant.

THE 21ST JULY 1848.

Case No. 74 of 1848.

Appeal from the decision of Muhunmud Allum, Moonsiff of Oolooberria, dated the 23rd day of February 1848.

Rajeeblochun Mullick, (Defendant,) Appellant,

versus

Rammohun Bose, (Plaintiff,) Respondent.

CLAIM, for the recovery of a sum of money, advanced on loan, including interest, laid at Company's rupees two hundred and seventy-four, annas four, gundahs fourteen, (Company's rupees 274-4-14.)

The papers of this case shew that the defendant and his late brother, since deceased, borrowed the sum of Company's rupees two hundred, on a note of hand, dated the 21st day of Aghun 1251 B. S., from the plaintiff; and, on the failure of the defendant to refund the amount with interest, the plaintiff instituted this

suit for Company's rupees two hundred and fifty-four, annas ten, gundahs fourteen, (Company's rupees 254-10-14.)

The defendant, in his answer, denies the debt, and declares the bond is a fabricated instrument.

The moonsiff decreed on the grounds set forth in his decision.

This case must be remanded for re-trial to the moonsiff, in order that the evidence of all the witnesses to the bond be taken. Therefore I decree this appeal, and reverse the decision passed by the moonsiff, on the 23d day of February 1848, and order that the case be remanded to the said moonsiff for re-trial, with instructions to restore the case to its original number on his file and re-hear the case.

Costs are to be paid for the present by each party respectively, and ultimately by the losing party.

The value of the stamp upon the petition of appeal to be refunded to the appellants.

THE 21ST JULY 1848.

Case No. 73 of 1848.

Appeal from the decision of Baboo Denonauth Bose, Moonsiff of Dwarhatta, dated the 12th day of February 1848.

Ramjoy Kamar, Casseenath Kamar, and Ramkoomar Kamar,
(Defendants,) Appellants,

versus

Denobundoo Roy Talookdar, (Plaintiff,) Respondent.

CLAIM, for the arrears of rent, with interest, laid at Company's rupees eleven, annas two, gundahs fifteen, (Company's rupees 11, annas 2, gundahs 15.)

The papers of this case shew that the defendants hold fourteen beegahs and five cottahs of land, in the village Dabypore, at an annual rent of rupees thirty-five; that the defendants having failed to pay the rent due from Bysak to Assar 1254 B. S., that is to say, the sum of rupees eight, annas thirteen, gundahs seven, including interest, the plaintiff instituted this suit.

The defendants, in their answer, state that they had rented fourteen beegahs and five cottahs of land in the village Dabypore, on a lease for three years from the 28th day of Joystee 1251 B. S., at an annual rent of twenty-five rupees, from the gomashthah of the plaintiff, by name Ramdhone Ghose; that on the expiration of the lease in the year 1254 B. S., the said gomashthah rented a

portion of the land, which had been previously rented to the defendants for three years, to one Kysto Doss, which person, that is to say, Kysto Doss, is in possession.

Kysto Doss filed a petition in the moonsiff's court, which supports the answer given by the defendants.

The moonsiff decreed the case on the grounds set forth in his decision.

It was necessary for the moonsiff to have enquired whether the said fourteen beegahs and five cottahs of land had been rented to the defendants, on an annual rent of thirty-five rupees, under a perpetual, or for a limited lease of three years, as stated by the defendants, at an annual rent of twenty-five rupees, and whether the claimant, Kysto Doss, was in possession of the portion of the land in question, in the year 1254, or not. The moonsiff having omitted to make these investigations and settle them, his decision is left incomplete. Therefore I decree this appeal, and reverse the decision of the moonsiff, passed on the 12th day of February 1848. and order that the case be remanded to the said moonsiff for retrial, with instructions to restore the case to its original number on his file, and then re-hear the case.

Costs for the present to be paid by each party respectively, and ultimately by the losing party.

The value of stamp upon the petition of appeal, to be refunded to the appellant.

THE 21ST JULY 1848.

Case No. 36 of 1848.

Appeal from the decision of Baboo Nobinchunder Mitter, Moonsiff of Rajupore, passed on the 15th day of January 1848.

Bhootnauth Manjy, (Plaintiff,) Appellant,

versus

Golukchunder Biswas, gomashtah, Ramtaruck Koomar, gomash-tah, Joykisto Mookerjee, Rajkisto Mookerjee, Ramchunder Chatterjee, zumcendar, and Rughoonauth Ghose, ijaradar, (Defendants,) Respondents.

CLAIM for the reversal of an order passed under Regulation V. of 1812, and for the refund of the proceeds of the sale, &c., laid at Company's rupees twenty-four, anna one, (Company's rupees 24, anna 1.)

The papers of this case shew that neither the plaintiff nor his late father, by name Narayn Manjee, possessed any rent-paying land in the village Khasroodharpore, nevertheless the ijaradar, by name Rughoonauth Ghose, and the gomashtah, by name Golukchunder Biswas, from ill feeling, and in connivance with the

zumeendars, petitioned the ameen of Sulkea, which is in another district, that is to say, in the district of the Twenty-four Pergunnahs, under the provisions of Regulation V. of 1812, against the father of the plaintiff, by name Narayn Manjee, the said Narayn Manjee having previously died, claiming the sum of rupees twenty-four, anna one, for arrears of rent of the said village Khasroodhoorpore due for the year 1252 B. S. up to the month of Phalgun, and they caused the attachment and sale of certain produce of two beegahs and half beegah (being part of the seven beegahs, nineteen cottahs, nine chittacks, and fifteen gundahs) of land, his, the plaintiff's, late father had farmed from one Sydunnessa Beebee, at an annual rent of rupees twenty-four, annas ten, gundahs nine, theels ten, for the sum of rupees eighteen, four annas, in consequence of which the plaintiff instituted this suit.

The defendants, Joykisto Mookerjee, Rajkisto Mookerjee, and Ramchunder Chatterjee, and Rughoonauth Ghose, in their answer, declare that Narayn Manjee, the father of the plaintiff, held eight beegahs of land in the villages Khasroodhoorpore and Waudpore, at an annual rent of rupees twenty-five, annas two, gundas eleven, cowree one, that on his failing to pay the rent for the year 1252 B. S., they presented a petition to the ameen of Sulkea (because the rent of their zumeendaree, lot Koomeermorah, is paid into the collectorate of the Twenty-four Pergunnahs) under Regulation V. of 1812.

The moonsiff having dismissed this case, the appellant preferred this appeal.

It appears from the papers in this case that the fact of the defendants having presented their petition to the ameen of Sulkea, under Regulation V. of 1812, for the realization of arrears of rent of the land in dispute, did not appear to the moonsiff to be illegal, because the revenue of the lot is paid into the collectorate of the Twenty-four Pergunnahs. This opinion of the moonsiff, I consider to be in contravention of Section 8 of Regulation III. of 1793, because in that section it is stated as follows, "provided the landed or real property to which the suit or complaint may relate, shall be situated, or, in all other cases, the cause of action shall have arisen, or the defendants, at the time when the suit may be commenced, shall reside as a fixed inhabitant within the limits of the zillah court over which its jurisdiction may extend." 2dly, the moonsiff also considers a copy of a roobukaree (proceeding) No. 316, dated the 8th day of January 1838, held by the collector of the district (Hooghly,) under Regulation VII. of 1799, which proceeding was filed in the case by the zumeendars, Joykisto Mookerjee, Rajkisto Mookerjee, and Ramchunder Chatterjee, and Rughoonauth Ghose, ijaradar, who, that is to say, the zumeendars and ijaradar, state it, that is to say, the roobukaree (proceeding) No. 316, to relate to the land for which rent was claimed in this case,

sufficient evidence to prove the fact that the father of the plaintiff had paid rent for certain lands situated in the villages Khasroodhoorpore and Waudpore: this opinion of the moonsiff seems to me to be incorrect and unjust, because it is clearly stated in the aforesaid roobukaree (proceeding) No. 316, that the land (for which rent was due by Narayn Manjee, the father of the appellant, and which rent amounted to rupees twenty-three, annas six) was situated in the villages *Khooshmura* and Waudpore, and it was for the rent of the land situated in those villages, that is to say, the villages *Khooshmara* and Waudpore, and not in the village Khasroodhoorpore, that the suit under Regulation VII. of 1799, was instituted; no mention being made of the village Khasroodhoorpore in the aforesaid roobukaree (proceeding) No. 316: moreover it appears from the said roobukaree (proceeding) No. 316, that summary suits for arrears of rent due on lands situated within the said lot Koomormora, have heretofore been filed in this district (Hooghly.) Under all these circumstances, I consider the decision passed by the moonsiff incomplete and illegal, and therefore I decree this appeal, and reverse the decision passed by the moonsiff, on the 15th day of January 1848, and order the case to be remanded to the said moonsiff for re-trial, with orders to restore it to its original number on his file, and then to re-hear the case.

Costs for the present to be paid by each party respectively, and ultimately by the losing party.

The value of the stamp upon the petition of appeal, to be refunded to the appellant.

THE 21ST JULY 1848.

Case No. 79 of 1848.

Appeal from the decision passed by Baboo Denonauth Bose, Moonsiff of Dwarhatta, on the 14th day of February 1848.

Bollye Soothurdhur Sein, (Defendant,) Appellant,

versus

Denobundoo Roy, talookdar, (Plaintiff,) Respondent.

CLAIM, for the arrears of rent, including interest, laid at Company's rupees fourteen, annas ten, gundahs thirteenth, (Company's rupees 14-10-13.)

The papers of this case shew that the defendant holds possession of eight beegahs and ten cottahs of land, in the village Ryechuk, at an annual rent of rupees twenty-two, annas eleven; that a balance of rupees four, annas fourteen, gundahs ten, remained unpaid by the defendant, for rent due for the year 1253 B. S., which sum, together with the rent due up to Assar 1254 B. S., that is to say, the sum of rupees six, gundahs nineteen, including

interest, make a total of rupees ten, annas fifteen, gundahs nine : the defendant failing to pay the same, the plaintiff instituted this suit.

The defendant, in his answer, declares that he rented the aforesaid eight beegahs and ten cottahs of land from Ramdhone Ghose, who was the former gomashtah of the plaintiff, on a lease for four years, at an annual rent of rupees twenty-two, annas eleven ; that he had paid the rent for the year 1253 B. S., and obtained a receipt for the same ; but owing to the present gomashtah, Muddunmohun Singh, being absent at the kutchery of the talookdar, he, the defendant, did not pay the rent for the year 1254 up to the month of Assar. •

The moonsiff having decreed the case, the appellant preferred this appeal.

The documents filed by the defendant, that is to say, the pottah and dakhilla (lease and receipt) ought to have been authenticated by the two gomashtahs ; this the moonsiff omitted to do ; therefore I consider the decision incomplete. Therefore I decree this appeal, and reverse the decision passed by the moonsiff on the 14th day of February 1848, and direct that the case be remanded to the said moonsiff for re-trial, with orders to restore the case to its original number on his file, and re-hear the case.

Costs to be paid for the present by each party respectively, and ultimately by the losing party.

The value of the stamp upon the petition of appeal, to be refunded to the appellant.

THE 21ST JULY 1848.

Case No. 37 of 1848.

Appeal from the decision of Baboo Denonauth Bose, Moonsiff of Dwarhatta, passed on the 5th day of January 1848.

Sheikh Neeamutoollah Oostagur, (Defendant,) Appellant,

versus

Ramkummul Baugdee, (Plaintiff, Respondent.

Ramdass Muzemdar Talookdar, (Defendant,) Respondent.

CLAIM, for the possession of certain rent paying land, including damages, laid at Company's rupees fifty-six, five annas, and seventeen gundahs, (Company's rupees 56-5-17.)

The plaint sets forth that the plaintiff held nine beegahs and eight cottahs and ten chittacks of sallee land, within the village Joykistopore, at an annual rent of rupees forty-one, annas six, gundahs eighteen ; that on the 27th day of Srabun 1253 B. S., when the plaintiff was about to transplant his paddy in four beegahs and six cottahs and three-quarters of a cottah of the said land, the defendant, Sheikh Neeamutoollah Oostagur, came and

forcibly prevented him, the said plaintiff, from so doing, and moreover dispossessed him of the land, in consequence of which the plaintiff instituted this suit.

The defendant Sheikh Necamutoollah, in his answer, states that the land in dispute is his purchased mohuthran and lakhiraj (rent-free) property; that the case can only be decided under the provisions of Regulation II. of 1819, and not in the civil court, &c.

The moonsiff of Dwarhatta, in reference to Section 30, Regulation II. of 1819, forwarded the nuthee of the case to the judge, which case was returned to the said moonsiff on the 13th day of May 1847, with instructions that the question to be tried is simply whether the plaintiff holds possession of the land as rent-paying, and not whether the land itself is lakhiraj, rent-free, or maul, rent-paying.

The moonsiff, on the 5th day of January 1848, having decreed the case, the appellant preferred this appeal.

The orders passed by the judge on the 13th day of May 1847, did not in any way prohibit the moonsiff from calling on the defendant to produce his evidence both oral and documentary, which the moonsiff appears to have understood he was not required to do, and his, that is to say, the moonsiff's having omitted to hear and record all the objections of the defendant, leaves the case open to cavil. I therefore consider the decision of the moonsiff incomplete and illegal. I, in consequence, decree this appeal, and reverse the decision passed by the moonsiff on the 5th day of January 1848, and order that the case be remanded to the said moonsiff for re-trial, with instructions to restore the case to its original number on his file, and, having supplied the omissions noticed in this decree, to re-try the case.

Costs to be paid for the present by each party respectively, and ultimately by the losing party.

The value of the stamp upon the petition of appeal, to be refunded to the appellant.

THE 21ST JULY 1848.

. Case No. 75 of 1848.

Appeal from the decision of Baboo Denonauth Bose, Moonsiff of Dwarhatta, dated the 12th day of February 1848.

Teelukram Chukurbuttee, (Defendant,) Appellant,

versus

Denobundoo Roy, Talookdar, (Plaintiff,) Respondent.

CLAIM for the arrears of rent, with interest, laid at Company's rupees four, annas three, gundahs four, (Company's rupees 4-3-4.

The papers of this case shew that the defendant holds four beegahs and seven and half cottahs of land in the village Dabypore, at an annual rent of Company's rupees ten, annas ten, gundahs fifteen, and on failure to pay the rent due from Bysack to Assar 1254 B. S., amounting to rupees two, annas eleven, gundah one, including interest, the plaintiff instituted this suit.

The defendant in his answer states that, with the exception of brimutter lakhiraj (rent-free) land, he does not possess any maul, rent-paying land within the aforesaid village, nor is he, the defendant, aware of the situation of the land, for which the plaintiff demands rent; that when the plaintiff shall produce a map of the land alluded to by him, the plaintiff, he, the defendant, will then be enabled to detail the particulars.

The moonsiff having decreed the case, the appellant preferred this appeal.

It was necessary for the moonsiff to have called upon the defendant to file a map of the land alleged by him, the defendant, to be brimutter, as the plaintiff has filed one to prove the situation of the land for which he demanded rent. The moonsiff having omitted to do so, his decision is clearly incomplete. I therefore decree this appeal, and reverse the decision passed by the moonsiff on the 12th day of February 1848, and direct that the case be remanded to the moonsiff for re-trial, with instructions to restore the case to its original number on his file, and then re-hear the case.

Costs to be paid for the present by each party respectively, and ultimately by the losing party.

The value of the stamp upon the petition of appeal, to be refunded to the appellant.

THE 21ST JULY 1848.

Case No. 76 of 1848.

Appeal from the decision of Baboo Nobinchunder Mitter, Moon-siff of Rajapore, dated the 17th day of February 1848.

Roy Bykuntanauth Chowdry, Roy Muthooranath Chowdry, and Nuffurchunder Koowur, Gomashita, (Defendants,) Appellants,

versus

Koodroot Mullik, Iddoo Mullik, Moteeoollah Mullik, and Hoshain Mullik, (Plaintiffs,) Respondents.

CLAIM for the reversal of an order passed under Regulation V. of 1812, and for damages sustained by the loss of paddy, &c. laid at Company's rupees sixty-three, annas two, gundahs seven, cowrees two, (Company's rupees 63-2-7-2.)

The plaint sets forth that Seekdar Mullik, deceased, the late father of the plaintiffs, paid an annual rent of rupees twenty-six,

annas seven, gundahs seven, cowrees two, for ten beegahs and eleven cottahs of land in the village Burkhoordarpoor; that the defendants falsely demand a rent of rupees six for two beegahs, nine cottahs, and four chittacks of other land, thus making a total of rupees thirty-two, annas seven, gundahs seven, cowrees two; that the rent due up to the month of Aghun 1253 B. S., amounted to rupees sixteen, annas eight, including interest, for which sum the zumeendar issued a notice under Regulation V. of 1812, and presented a petition to the ameen for the attachment and sale of the property; on this the respondents deposited the sum of rupees sixteen, annas eight, but not having received an account of the paddy, &c. the plaintiff instituted this suit.

The defendant, Nuffurchunder Koowur, in his answer, states that the plaintiff, Hoshein Mullik, rented two beegahs and nine and a quarter cottahs of land, on the 25th day of Assar 1253 B. S., on an annual rent of six rupees, on a lease of one year; that the plaintiffs have only paid rupees ten, out of rupees 32-7-2-2, (including the former rent,) of the rent due by them up to the month of Aghun 1253 B. S.; and upon their failing to pay the balance of rupees fifteen, annas fifteen, a notice was issued under Regulation V. of 1812, against them, for rupees sixteen, annas eight, including interest; that on the plaintiffs having deposited the said sum, the attached property was made over to them.

The moonsiff decreed the case on the grounds set forth in his decision. I do not see any sound reason on which to disturb the decision of the moonsiff passed on the 17th day of February 1848. I therefore dismiss this appeal with costs.

ZILLAH JESSORE.

PRESENT: H. F. JAMES, Esq., JUDGE.

THE 26TH JULY 1848.

CASE No. 54 of 1846.

*Regular Appeal from the decision of Moulvee Mooftee Lutf Hossein,
1st Principal Sudder Ameen, dated 14th July 1846.*

Mr. A. Battersby, (Defendant,) Appellant,

versus

Mr. Simson, (Plaintiff,) Respondent.

CLAIM laid at Company's rupees 1,570-1-8.

This suit was instituted to set aside an award passed under Act IV. of 1840, and obtain possession of certain lands with wasilat.

The plaint sets forth that between the factories Komedpore and Damoodiah there had long existed disputes regarding indigo lands and regarding the boundaries of the two factories; and that in 1831 Mr. J. Watson had been appointed arbitrator; and that he had made a map of some of the lands, and had established a boundary line, which had been approved of by the proprietors of the two factories; and that an agreement had been subsequently drawn up between the parties, allotting to each factory the lands as described by Mr. Watson's arbitration. This agreement is dated January 28th 1836, is on stampt paper, and signed by the parties, then owners of the factories—Mr. Simson on one side, and Messrs. Carr, Tagore and Co. and Mr. A. Wight, on the other. The plaintiff states that in 1247 he took from Puddum Lochun, and in 1249 from Teeluk Chunder Shah and others, leases of certain lands in Chur Dadapore, amounting in all to 95 beegahs, 18 cottahs; and that these lands were included in Mr. Watson's map, or sketch, and belonged to the Komedpore factory. However, in 1250 a dispute arose regarding the crops of these lands, and a case under Act IV. of 1840 ensued, by which the produce of the lands and possession of the same were awarded to the proprietor of the Damoodiah factory: therefore to upset the summary decision this case is brought.

The defendant replied, that the lands in dispute are on his side of the boundary line laid down by Mr. Watson; and that he holds a pottah for the lands from the guardian of the minor Raja Kistounath; that Puddum Lochun and Teeluk Chunder Shah

have no right to the lands; and that the proprietors of his factory (Damoodiah) always held possession of and cultivated them.

The principal sudder ameen in 1846 decreed this case in favour of the plaintiff, giving his reasons for so doing—that the lands appeared to belong to his factory; that the documents by which he held them were valid; and that the defendant seemed to rest his claim to them on the summary decision under Act IV. of 1840, by which he had been put in possession of them. This decision was appealed against by the defendant in this court; and my predecessor, on the case, coming before him, thus records his opinion: “In order to determine the point as to which factory the lands belonged to, it was necessary to examine the agreement between the parties, which was called for by the principal sudder ameen from the plaintiff, on the 24th April 1845. It was, however, never produced in court until the 15th July 1846; nor was any reason assigned why it could not be produced within six weeks from the time it had been called for. On the 15th July 1846, the agreement was produced by the defendant; but previously to that date the suit had fallen under Act XXIX. of 1841. Since both parties are present in court, it is not necessary to send the suit back to be disposed of under that Act by the principal sudder ameen. It is sufficient to declare that his decision is null and void; and that the plaintiff must pay the costs of both suits; and that the amount of the stamps, on which the appeal has been made, may be returned except 8 annas on which amount of stamp a summary appeal might have been made.”

This order was appealed against, and the Sudder upset it, and remanded the case to be decided on its merits. The points, in my opinion, to be enquired into in this case, are whether the lands belong to the Komedpore or the Damoodiah factory, by discovering on which side of the boundary line they are; and secondly, the validity of the documents, by which the party to whose right they may fall, holds them. With respect to the first I found that both parties agreed to the correctness of the sketch made by Mr. J. Watson in 1831, and to its forming the basis of the agreement subsequently entered into between the proprietors of the factories; and in this sketch it is laid down that “the boundary line between the zemindaries,” at the point where the chur of Dadapore joins that of Baharchur, is to constitute the boundary line between the two factories; and I therefore ordered a local investigation to be held, and I sent out the naib nazir of my court to make a sketch of the lands, and to determine on which side the boundary line the lands in dispute were situated. The investigation and report of this officer I did not consider complete, in consequence of the zemindary boundary line being imperfectly and indistinctly defined; and I deputed the moonsiff of Dhurmpore to the spot, and requested him, with reference to Mr. Watson’s map, of which I forwarded him a copy, to determine “the zemindary

boundary line," and then to note down the position of the lands in dispute. This he has done in an able manner; and from the sketch he has made it is evident that the Damoodiah concern has no right to the lands; and that they are part and parcel of the Dadapore chur; and that by the agreement they strictly belong to the Komedpore factory: for in the agreement it is distinctly laid down in these words: "that as regards the boundary between the factories of Mahaneeghur, in the Komedpore division, and Noorlapore, in the Damoodiah division, the Dadapore village and lands shall belong to Mahaneeghur, and Khananuggur and Luckee-koradee villages, and lands shall belong to Noorlapore; and that the boundary line between the said factories shall be the one formerly made by Mr. J. Watson," &c. Moreover I find that the pottahs of Puddum Lochun and Teeluk Chunder, by which the respondent (Mr. Simson) claims the lands are good and valid; and that these people took the lands of Dadapore chur from the deputy collector, who, on their first formation, had the letting of these lands on the part of Government. Under these circumstances I confirm the decision of the principal sudder ameen, and dismiss the appeal with costs.

THE 26TH JULY 1848.

CASE No. 55 of 1846.

Regular Appeal from the decision of Moulvee Lutf Hossein, 1st Principal Sudder Ameen, dated 14th July 1846.

Teeluk Chunder Shah, (Plaintiff,) Appellant,

versus

Mr. A. Battersby and 25 others, (Defendants,) Respondents.

CLAIM laid at Company's rupees 1,542-4.

This suit was instituted to set aside a summary award passed under Act IV. of 1840, and to get possession of certain lands with wasilat.

This case is connected with above case No. 54.

The plaintiff, Teelukchunder Shah, states that he held some lands belonging to Dadapoor chur, from which he was ousted in Jeit 1250 by the defendant, Mr. Battersby, who having got a decree under Act IV. of 1840, for the possession of certain lands, took possession of his lands also.

The defendant denies the right of the plaintiff to the lands, and claims them as his under certain pottahs given him by the gomashita of the guardian of Raja Kistonath Roy.

The principal sudder ameen dismissed the case, on the grounds that the documents by which the plaintiff claims his right to the lands are invalid, and that the person, viz. Lukeekant Boomick,

the putwaree, who granted these documents, had not the power to do so, since by the papers filed by the defendants it was evident that at the time the raja was a minor; and that Lukeekant was not enabled to grant leases of land during the raja's minority.

This decision of the principal sudder ameen I am quite at a loss to understand. In case No. 54 he upheld the amulnamah given by Lukeekant Boomick, and in this case he seemed to forget that, previous to the amulnamah, the appellant had obtained from the deputy collector a pottah for the lands when they first formed and were resumed; and that the amulnamah was subsequently granted on the settlement of the lands being made with the guardian of the minor raja, whose zemindaree these new-formed lands adjoined.

There is no doubt in my mind of Lukeekant Boomick having the power to grant the amulnamah, for with the papers of the case is filed a document delegating to him this power, in which I put faith. I therefore upset the order of the lower court, and decree the appeal, and possession to the plaintiff with wasilat from the date of his dispossession, to be determined by a local investigation, with interest and costs of both courts against the defendant, Mr. Battersby.

ZILLAH MIDNAPORE.

PRESENT: H. T. RAIKES, ESQ., JUDGE.

THE 7TH JULY 1848.

CASE No. 273 of 1847.

Appeal from the decision of Akbur Ally, Moonsiff of Nema, passed on the 5th of October 1847.

Narain Mytee and others, (Defendants,) Appellants,

versus

Radhakisto Munna, (Plaintiff,) Respondent.

THE plaintiff instituted this suit to recover possession of 8 cottahs of land and a gurreeah, which he said he had been ousted from by his landlord, one of the defendants, in 1250 Umlee, and another defendant, Narain Mytee, who now occupied his jote.

The defendant, Narain Mytee, said he held a pottah for the land from the proprietor, dated the 7th Kartick 1251.

The proprietor stated that the plaintiff never paid any rent, and had abandoned the land; that he had voluntarily given in an istafa, or relinquishment, of the jote, which had been let to Narain Mytee.

The moonsiff says, in his decree, that the plaintiff's witnesses, and the local ameen, who made enquiries on the spot, state the jote to have been in possession of the plaintiff up to Maugh 1250; he therefore directs him to be reinstated, and, taking the value of the products of the land in fruit, &c., according to the price such articles brought in 1254, decrees that amount yearly as profits to the plaintiff during the time he was dispossessed.

The moonsiff has not made a proper enquiry in this case. The point at issue is whether the lease of the jote has been legally cancelled or not. The moonsiff makes no mention whatever of the istafa filed by the defendant, Kissen Churn Nund, though his witnesses were examined. This case is therefore remanded to the present moonsiff, who will decide whether or not the lease formerly granted to the plaintiff has been cancelled, either by his failure to pay the rent or by voluntary resignation of his lease. The stamp fees to be returned.

THE 7TH JULY 1848.

Case No. 276 of 1847.

Appeal from a decision of Akbur Ally, Moonsiff of NemaI, dated the 5th of October 1847.

Rogonath Doss Byragee, (Plaintiff,) Appellant,

versus

Ram Behra, Bheem Purdhan, Harroo Dullye, and Soonder Dullye,
(Defendants,) Respondents.

THE plaintiff sued for rupees 31, annas 11, value of dhan, which the defendant had bound themselves to deliver on a certain date by a bond, dated the 25th of Sawun 1246 Umlee.

The defendants denied the giving of the bond. Harroo Dullye and Soonder also stated they were at another place on the date in question, and Soonder Dullye pleaded that at the time mentioned he was under age.

The moonsiff, without enquiring into the merits of the case, appears to have dismissed the suit, because the names of the defendants were first recorded in the bond together, and the names of their places of residence afterwards, without specifying particularly where each individual had his dwelling, and because one of the witnesses said they all resided in *one* of the villages mentioned.

JUDGMENT.

The bond appears to me to afford sufficient record of the defendants' identity, and the defendants do not deny that they are the parties intended. I therefore see no grounds for the objection urged by the moonsiff, and return this case to the present moonsiff that he may try it upon its merits. The stamp fees to be returned to the appellants.

THE 7TH JULY 1848.

Case No. 294 of 1847.

Appeal from a decision of Akbur Ally, Moonsiff of NemaI, passed on the 30th September 1847.

Séebchurn Misree, (Plaintiff,) Appellant,

versus

Sctetaram Gurrye, (Defendant,) Respondent.

THE plaintiff instituted this suit to set aside a decision of the revenue authorities given against him, directing the sale of his attached property in satisfaction of rent claimed by the defendant for 11 annas kist of 1253 Umlee.

The plaintiff denied holding any land in the village; but an ameen, who was sent out by the moonsiff, reported that the plaintiff's father during his life time held the land alluded to, and on his death the plaintiff, through his agent, arranged with the ryots, and that the plaintiff receives their rents. The moonsiff, therefore, dismissed the suit, and confirmed the summary decision.

The plaintiff appeals, and states that he is a claimant for the proprietary rights of the estate, and has instituted a suit in the Supreme Court; that the defendant, who states himself to have taken a farm of the village, has no pottah, and only claimed rent on some *junma wassil baquee* papers prepared by himself, and not signed or acknowledged by him; and that he denies holding any jote in the village as stated.

JUDGMENT.

I observe that an ameen was appointed specially by the moonsiff to make local enquiry into the fact of possession, and that he proceeded to the spot, and, after closing his enquiry, reported to the moonsiff that the plaintiff was the real jotedar, but had let out the land to ryots. On this fact alone the plaintiff (appellant) was held liable for the rents; but I observe the moonsiff has neglected to swear the ameen before receiving the report as required by Section 17, Regulation IV. of 1793. This case must therefore be returned to the present moonsiff, to supply this omission and then decide the case. The stamp fees are returned to the appellant.

THE 7TH JULY 1848.

Case No. 295 of 1847.

Appeal from a decision of Akbur Ally, Moonsiff of Nema, passed on the 30th September 1847.

Sceebchurn Misree, (Plaintiff,) Appellant.

versus

Sectaram Ghurree, (Defendant,) Respondent.

THE circumstances of this case are the same as those detailed in No. 294, decided this day. The moonsiff also refers to his decision in that case for his reasons in the present one. It is therefore, for the same cause as mentioned in No. 294, returned to the present moonsiff for decision.

THE 7TH JULY 1848.

Case No. 296 of 1847.

Appeal from a decision of Akbur Ally, Moonsiff of Nema, passed on the 30th September 1847.

Seebchurn Misree, (Plaintiff,) Appellant,

versus

Gourchurn Bhooya, (Defendant,) Respondent.

THE circumstances of this case are the same as those detailed in No. 294, decided this day. The moonsiff also refers to his decision in that case for his reasons in the present one. It is therefore, for the same cause as mentioned in No. 294, returned to the present moonsiff for decision.

THE 7TH JULY 1848.

Case No. 297 of 1847.

Appeal from a decision of Akbur Ally, Moonsiff of Nema, passed on the 30th September 1847.

Seebchurn Misree, (Plaintiff,) Appellant,

versus

Gourchurn Bhooya, (Defendant,) Respondent.

THE circumstances of this case are the same as those detailed in No. 294, decided this day. The moonsiff also refers to his decision in that case for his reasons in the present one. It is therefore, for the same cause as mentioned in No. 294, returned to the present moonsiff for decision.

THE 12TH JULY 1848.

Case No. 104 of 1848.

Appeal from a decision of Mr. C. Mackay, Principal Sudder Ameen, passed on the 22d of April 1848.

Doorgachurn Patter, (Defendant,) Appellant,

versus

Ayhillia Deye, widow of Govind Churn Patter, (Plaintiff,) Respondent.

THE plaintiff instituted this suit to recover possession of property, real and personal, valued at rupees 684, 8 annas, 3 pie, which she stated had been in her possession since the death of her husband, the defendant's brother. She pleaded that after her

husband's death she took possession of his property, and lived in the family mansion, but that in 1244 Umlee, the defendant had deprived her of the property, and, fearing some bodily harm to herself, she fled to her father's house, and commenced this suit in 1252 Umlee.

The defendant admitted that the plaintiff's husband and himself had been recorded joint proprietors of the share they held, but that his brother never exercised any possession over the property, and that he died in 1233 Umlee; that the plaintiff, his widow, had never left her father's house, and had never had possession of the property, and could not now, under the law of limitation, claim possession of her husband's share.

The principal sudder ameen remarks there are two points for determination: "Is the law of limitation in bar of the plaintiff's suit, as urged by the defendant? *2dly.* If not so, has the plaintiff established by proof her right to the movable property and effects claimed? The immovable property being mouroosee, is admitted by the defendant, therefore no proof with regard to that point is necessary."

The principal sudder ameen then states that three witnesses of the defendant gave evidence regarding the lapse of time, and a letter was filed to support the plea; but without giving any particulars, he observes that these were insufficient, as the letter was unauthenticated, and the depositions "discrepant" and unsupported by documentary evidence: he therefore considered the plea set up by the defendant not proved by him. That three witnesses gave evidence in favor of plaintiff's claim to the movable property, and without further explanation decrees the plaintiff entitled to receive the value of it on their testimony.

I am of opinion that this mode of deciding a case is not in conformity with the meaning of Act XII. of 1843. The principal sudder ameen's decision resolves itself into this: Three witnesses were examined for the defence set up by the defendant, whose evidence (whatever it be) is set aside. Three witnesses gave evidence for the plaintiff and proved her claim. If the principal sudder ameen had confined his decision to these words, his reasons would have been equally intelligible. He merely adds that "the defendant's plea of acquisition by his own personal means not having been established to the satisfaction of the court, is rejected."

With reference to the above remarks I return this case to the principal sudder ameen, and direct him to record at large his reasons for considering the law of limitation inapplicable to the case, and to state what facts or circumstances were detailed by the witnesses, which led him to decree the plaintiff's claim in full for her husband's property and to reject the pleas of self-acquisition put forth by the defendant. The stamp fees to be returned to the appellant.

THE 21ST JULY 1848.

Case No. 212 of 1847.

*Appeal from a decision of Khyrat Hossein, Moonsiff of Kassigunge,
passed on the 13th of July 1847.*

Bullye Bhooya, (Defendant,) Appellant,

versus

Hurcoomar Thakoor, (Plaintiff,) Respondent.

THIS suit was instituted in the moonsiff's court by the respondent, to assess certain lands held by the appellant in his zemindaree of Golegaon at the pergunnah rates.

The moonsiff decreed the suit in favor of respondent, and directed an enquiry into the rates of measurement current in the pergunnah. These were stated by the local ameen, and were found to differ from those recorded in the pleadings of both parties; but as the data was a fair average between the two, and the report forwarded by the ameen corroborated by other parties, examined on this point by the moonsiff, he decided upon being guided by this, and decreed the land to be of the extent and description recorded by the ameen.

The appellant is dissatisfied with this part of the moonsiff's decision, and states that his land is now rated by the moonsiff's decision to comprise 11 beegahs, 11 cottahs of irrigable land, and 7 beegahs, 18 cottahs of high land, whereas, if the measurement was made by the rod registered in the collector's office, it would amount to 10 beegahs, 1 cottah of irrigable, and 6 beegahs, 16 cottahs of high land; that moreover the standard taken by the local ameen was the height of a doorway in the house of the pergunnah casee, which he stated to be the standard prevalent in the pergunnah; but this could not be the case, as the measuring rod he had put in was sent to the collector by the zemindars as the rod in use in their pergunnah.

I find that the moonsiff made a very full investigation into this matter; that in the first instance the plaintiff made out the lands to be 13 beegahs, 2 cottahs of irrigable land, and 8 beegahs and 9 cottahs of high land; and the defendants as stated in this appeal. The enquiries of the moonsiff from parties in his cutcherry and from the local ameen induced him to adopt a different standard from either of these; and as I can see nothing improbable in the local ameen's account of this standard, and it strikes a very fair average between the rates recorded in the pleadings of both parties, I see no reason to interfere with the moonsiff's decision. With reference to the assertion put forth by the appellant that he wishes to abide by the standard in the collector's office, I have to remark that the collector does not guarantee the correctness of it; and as it was sent to him by those who had a direct interest in

deceiving him, I doubt its being the true standard adopted by the zemindars themselves in measuring the lands of their tenantry. Under these circumstances I confirm the decree of the moonsiff of Kassigunge, and dismiss the appeal. All expences of this court will be defrayed by the appellants.

THE 27TH JULY 1848.

Case No. 159 of 1847.

Appeal from a decision of Akbur Ally, Moonsiff of Nema, passed on the 8th of June 1847.

Nubbokisto Doss, Nukkoo Kundar, and Seeboo Purrya, (Plaintiffs,) Appellants,

versus

Chytun Mundul, Soonder Jana, and Dabee Bur, (Defendants,) Respondents.

Ramkannye and Ramgovind Chowdhree, third parties, opposing the plaintiffs' claim.

THE plaintiffs in this suit obtained *jotedaree pottahs* from the revenue authorities for 263 beegahs of land, which had fallen out of cultivation, included in some rent-free lands resumed by Government, and settled for with the proprietors, Ramkannye and Ramgovind Chowdhree, the opposing parties in this case.

The plaintiffs state that, after receiving their pottahs, they let part of the lands to the defendants, taking from them a kabooleut under which they agreed to give yearly two *arras* of dhan for each beegah. This took place in 1251 Umlee, and a summary suit was brought by the plaintiffs for the rent of 1252 Umlee, valuing the dhan they were entitled to under the kabooleut at 63 rupees.

Their claim was dismissed in the summary suit, on the grounds that as they held a pottah for the lands at a progressive rate, commencing from 1253 Umlee, and got the lands rent-free for 1252, they could not demand rent from any one for that year at a rate equivalent to the full rates they were to pay eventually; and also that the land had remained uncultivated during the previous year, and had been then only brought into cultivation by the proprietors themselves, the opposing parties in the suit.

A regular suit was then instituted by the plaintiffs to set aside this decision of the revenue court; but the moonsiff confirmed the summary decision for the reasons set forth in his decree.

From this decision the present appeal was preferred.

JUDGMENT.

The facts of the case are these. The opposing parties are the proprietors of the land, and state that they constructed works to

defend the lands from inundation, and that the defendants are their ryots; that when the land was resumed and assessed, they did not come forward to make a settlement at that time, but afterwards stated their willingness to do so, and the settlement was concluded on the 17th Aghun 1252; that the plaintiff never took any measures to cultivate the lands; and that his pottah was virtually cancelled by their agreeing to the Government terms of settlement. The plaintiff on the other hand states that he came forward to take the uncultivated lands on a russuddee jumma, and to bring them into cultivation, and procured a pottah to this effect from the settlement officer, and that the defendants (who are the old ryots) entered into engagements for the cultivation of the lands mentioned in their kabooleuts.

It appears, moreover, that these lands were held formerly by the defendants in the present suit and others, and had been abandoned in consequence of inundation from the sea. That the settlement officer, in order to include them within the estate and bring them under settlement, gave a pottah to the plaintiff in 1251 Umlec, stipulating that the full rates should be gradually reached in 1256. That in a proceeding of this officer, dated the 21st April 1847, which is filed with the nuthee, he distinctly states that the plaintiff procured a *jotedaree* pottah; and that the opposing parties are the proprietors, and that the rents are to be paid to them from the date of their concluding a settlement with the Government. According to this arrangement it is very clear that the plaintiffs themselves are only ryots, and possess no transferable interests in the land. I am therefore of opinion that they cannot in any way avail themselves of the privileges of a summary suit against the defendants, which are specially confined to the landholders and other *proprietors* of land by Section 2, Regulation VII. of 1799; but they should have sued regularly under Clause 3, Section 15, of the same enactment. I therefore uphold the decision of the moonsiff, refusing to set aside the summary decision of the revenue authorities, but not on the grounds stated by either of those officers, but for the reason that the claim could not originally be taken up under the summary laws.

• THE 28TH JULY 1848.

Case No. 218 of 1847.

Appeal from a decision of Khyrat Hossein, Moonsiff of Kassigunge, passed on the 19th July 1847.

Gopaul Bhooya, (Defendant,) Appellant,
versus

Hurcoomar Thakoor, (Plaintiff,) Respondent.

THE plaintiff instituted this suit to enhance the amount of rent paid by the defendant on 15 beegahs, 19 cottahs of land, stating

that he had purchased the estate by private sale, and had issued on the defendant the prescribed notice under Section 9, Regulation V. of 1812.

The defendant replied that he held the land as a khoddkusta ryot, and that his rent was not liable to enhancement; that the plaintiff had only purchased the property from the former proprietor, and therefore could exercise no new rights over the tenants; that moreover the land held by him was only 15 beegahs, 3 cottahs.

The moonsiff deputed an ameen to measure the land according to the pergunnah standard, and on his report decreed the quantity of land liable to enhancement to be 15 beegahs, 15 cottahs, 11 biswas, 10 goonts, 3 kura, and the rent to be 37 rupees, 8 gundas, 2 cowrees, or Company's rupees 39-7-18 gundas.

The defendant appeals against the decision on the pleas put forward in his reply in the lower court, and took objection to the measurement adopted by the lower court, stating that the measuring rod was eight fingers breadth less than the null of the pergunnah.

JUDGMENT.

It appears that the notice of the plaintiff was issued in conformity with Section 9, Regulation V. of 1812, stating the amount of rent claimed and the right by which the plaintiff issued it. The defendant holds no pottahs, and only pleads previous exemption from enhancement. As this plea is not sufficient to prevent the proprietor from obtaining his just dues from the ryots, I uphold the moonsiff's decision. The question regarding the measuring rod is the same already remarked upon in case No. 212, decided on the 21st instant: the remarks on that case are also applicable to this now decided. The moonsiff's order is confirmed in full, and this appeal dismissed with costs.

THE 28TH JULY 1848.

Case No. 239 of 1847.

Appeal from a decision of Khyrat Hossain, Moonsiff of Kassigunge, passed on the 13th August 1847.

Lukheenarain Udhikary, (Defendant,) Appellant,

versus

Hurcoomar Thakoor, (Plaintiff,) Respondent.

THIS suit was instituted for an enhancement on 17 beegahs, 3 cottahs of land, and a decree given by the moonsiff to fix the rent on 14 beegahs, 12 cottahs, 6 biswas of land according to the pergunnah rates, or 14 rupees, 12 annas, 6 pie.

The circumstances of this case and the grounds of decision are precisely the same as those set forth in Nos. 212 and 218, decided this month. The same order is therefore applicable, and the appeal is dismissed with costs.

THE 28TH JULY 1848.

Case No. 240 of 1847.

Appeal from a decision of Khyrat Hossein, Moonsiff of Kassigunge, passed on the 16th August 1847.

Gridhur Parce, (Defendant,) Appellant,

versus

Hurcoomar Thakoor, (Plaintiff,) Respondent.

THIS suit was instituted for an enhancement on 21 beegahs, 9 cottahs of land, and a decree given by the moonsiff to fix the rent on 21 beegahs, 9 cottahs of land according to the pergunnah rates.

The circumstances of this case and the grounds of decision are precisely the same as those set forth in Nos. 212 and 218, decided this month. The same order is therefore applicable, and the appeal is dismissed with costs.

THE 28TH JULY 1848.

Case No. 242 of 1847.

Appeal from a decision of Khyrat Hossein, Moonsiff of Kassigunge, passed on the 17th August 1847.

Kartick Paul, (Defendant,) Appellant,

versus

Hurcoomar Thakoor, (Plaintiff,) Respondent.

THIS suit was instituted for an enhancement on 17 beegahs, 2 cottahs, and 2 pudika of land, and a decree given by the moonsiff to fix the rent on the said land according to the pergunnah rates.

The circumstances of this case and the grounds of decision are precisely the same as those set forth in Nos. 212 and 218, decided this month. The same order is therefore applicable, and the appeal is dismissed with costs.

ZILLAH MOORSBEDABAD.

PRESENT: H. P. RUSSELL, Esq., JUDGE.

THE 21ST JULY 1848.

No. 67 of 1847.

Regular Appeal from the decision of Baboo Tarrakishen Haldar, Moonsiff of Jungypore, dated the 23d February 1847.

Neelkumul Chowdree and Deb Dutt Chowdree, (Plaintiffs,) Appellants,

versus

Pran Mundul, (Defendant,) Respondent.

Rupees 133. Bond.

The plaintiffs, who represented themselves as being in partnership, sued to recover from the defendant the amount of a bond, dated 5th Magh 1250 :

Amount of bond,	100	0	0
Interest due thereon,	34	11	3
	<hr/>		
	134	11	3
Deduct paid on 18th Bysak 1251, 1 0 0			
Interest thereon, 0 5 0			
	<hr/>		
	1	5	0

Amount of suit, rupees 133 6 3

The defendant, in answer to the suit, denied the bond *in toto*, stating that the plaintiffs bought of Ramsoonder Rae, Ramkumul Rae, and Harradhun Rae a 5 annas share of the village of Bagdanga, having also from them a lease of the remaining 11 annas, but that the three latter retained in their own hands some rent-free land, which they placed in his charge as a head man of the village ; and that the plaintiffs had maliciously preferred the suit against him, as he would not permit them to interfere with the land. The defendant further pleaded that he left his village on the 3d of Magh 1250, and came to Berhampore and remained till the 8th of the month, having accompanied Ramsoonder Kamar, who came for the purpose of preferring an appeal from a decision given against him.

The plaintiffs, in their rejoinder, denied that the defendant was a mundul, or a head man of the village, and said that on the 26th Pous 1253 the defendant offered to enter into a deed of instalment for the amount then due, which offer they rejected.

On the part of the plaintiffs five witnesses deposed to the execution of the bond which was filed in court, one witness to having on several occasions been deputed by the plaintiffs to ask for payment, three to the defendant's offer to execute a deed of instalment, and one to the payment of one rupee.

Eight witnesses were examined for the defence, of whom four said that they heard the defendant say that he was going to Berhampore on the 3d Magh 1250, two, that they left their village with him on that day, and two more that they saw the defendant at Berhampore on the 5th of Magh 1250.

In further proof of the claim on the defendant, the plaintiffs produced their daily book, in which the transaction is entered.

The moonsiff rejected the evidence as to the *alibi* as unsatisfactory, but dismissed the suit, on the ground that the plaintiffs' witnesses were their servants; that they lived eight miles from the defendant's village; that some of the leaves of the plaintiffs' book appeared to have been changed; and that, if the defendant had borrowed the money, he would probably have taken some of his own friends as witnesses; and that no mention of payment was to be found in the plaintiffs' book.

Against this decision the plaintiffs have appealed. I find that the plaintiffs' account books of the year 1251, have not been called for, nor their books showing the payment, which the plaintiffs say was made. It appears that the daily account book, which has been filed, is in the hand writing of the plaintiff Deb Dutt; but it has not been proved. I consider therefore that the moonsiff's investigation is incomplete, and accordingly decree the appeal, and return the case for re-trial. The usual order will issue regarding the return of the stamp duty.

THE 21ST JULY 1848.

No. 69 of 1848.

Regular Appeal from the decision of Moulvee Mahomed Mobcen, Moonsiff of Gowas, dated the 30th March 1848.

Mahomed Waris Mundul, (Plaintiff,) Appellant,

versus

Nuttoo Mundul, (Defendant,) Respondent.

Rupees 23-13-4. Bond.

THE plaintiff sued the defendant to recover the sum of rupees 16-4, said to have been lent on a bond bearing date 25th Assar 1250,

to which document the plaintiff asserted that the defendant had affixed his mark over his name, the amount being, with interest, rupees 23-13-4.

The defendant, in reply to the suit, denied having executed the bond, stating that in the year 1248, he and his nephew Mamlut settled all transactions, which they, together with the defendant's brother, Hedait, had had with the plaintiff and his father, by giving them some bullocks and calves; that the plaintiff's late father bought some trees, which were sold in satisfaction of a decree, which a man named Gooroochurn Shah held against him, but that, after purchasing the trees, the plaintiff's late father dispossessed him of the land on which they stood; and that the present suit had been instituted against him, as he was about to prosecute for possession of the land.

The moonsiff, after taking the evidence of two witnesses to the execution of the bond, dismissed the suit, as he did not consider it sufficiently proved. He states that, of the four remaining witnesses, one was not pointed out, that one, Bawul, attended court, but was not examined, that a third (the writer of the bond,) on seeing the pcon with the subpoena, immediately absconded, and that another witness acknowledged the service of the subpoena under a different name.

The plaintiff, being dissatisfied with the moonsiff's decision, has appealed to this court. I observe that of the two witnesses examined one says that he does not remember if the defendant executed the bond or not. Under these circumstances, it was incumbent on the moonsiff to have taken steps for the attendance of the remaining witnesses. I observe that that officer has not explained the reason of the witness Bawul, though present, not having been examined. I consider that his investigation under the circumstances is imperfect, decree the appeal, and return the case for re-trial.

The usual order will issue as regards the return of the amount of the stamp on which the petition of appeal is engrossed.

THE 21ST JULY 1848.

No. 90 of 1848.*

Regular Appeal from the decision of Baboo Goorooopersaud Bose, Moonsiff of Kandhee, dated the 13th May 1848.

Shekh Mahomed Alli *alias* Kalloo Mea, (Plaintiff,) Appellant,
versus

Shekh Mahomed Hossen, (Defendant,) Respondent.

Rupees 7, 3 annas, value of rice.

THE plaintiff stated that on the 7th Jeit 1250 B. S., the defendant borrowed of him 1 bis, 16 arrees of rice, payable in the ensuing month of Pous, with half as much again; that he accordingly sued

for the value of the grain at the rate it was selling at in the month of Assar 1251, being at 9 arrees per the rupee, .. Rs. 5 4
Interest, 2 1

The defendant, on whose residence notice was affixed on the 22d November 1847, appointed a pleader on the 14th January 1848, but put in no defence.

On the part of the plaintiff four witnesses were examined, two of whom proved nothing, a third partly proved the case, and the fourth being the plaintiff's nephew, the moonsiff rejected his evidence altogether, and dismissed the claim.

The plaintiff, being dissatisfied, has appealed to this court. I find that there are four more witnesses, whose evidence is available, I consider that officer's investigation therefore manifestly incomplete, and accordingly decree the appeal, and return the case for re-trial. The usual order will issue as regards the return of the amount of stamp on which the petition of appeal is engrossed.

• THE 24TH JULY 1848.

No. 99 of 1847.

Regular Appeal from the decision of Baboo Tarakishen Haldar, Moonsiff of Jungypore, dated the 14th-April 1847.

Gopcenath Mundul, (Plaintiff,) Appellant,

versus

Lalchand Chayn and Phoolchand Chayn, (Defendants,)

Respondents.

Rupees 127-2-2. Engagement.

THE plaintiff stated that the defendants and their late brother, Ramchand, had pecuniary transactions with his late grandfather, Ramjewun Mundul, who died on the 4th Chyete 1251; that on the 14th Assar 1239 Ramchand gave Ramjewun Mundul a deed of instalment, for rupees 90-12, the amount then due; that on the 25th Aughun 1246, subsequent to Ramchand's demise, the defendants came and made a calculation of what they owed, and entered into an engagement to pay the same in favor of Ramjewun Mundul,

Amount of deed,	73	0	0
Interest,	62	9	9
		<hr/>	<hr/>
		135	9 9

Deduct paid,	5	0	0
Interest thereon,	3	7	7
	<hr/>	<hr/>	<hr/>
		8	7 7

Cor's Rs... 127 2 2

The defendants, in denying having executed the last deed, on which the suit was brought, admitted that they had had money transactions with the plaintiff's grandfather; that the first deed, for rupees 90-12, was given by their deceased brother, Ramchand, and pleaded that they separated from him in Bhadur 1244; that a great deal more had been paid than was sufficient to satisfy the amount of the same, the plaintiff's grand-father having received in Aghun 1242, mulberry plants to the value of Rs. 46 0 0

In Assar 1243 ditto ditto,	5	8	0
In Aghun cash from Ramchand,	40	0	0
In Aghun 1244, mulberry plant,	9	0	0
In Magh 1244,	6	0	0
In Assar 1244,	4	0	0
and mulberry roots for transplanting,	16	0	0
	<hr/>		
	126	8	0

that after deducting the amount of the deed, 90 12 0

there remained a balance of Rs. 35 12 0

that in Assar 1245, in consequence of their brother Ramchand being ill, they asked the plaintiff to return the instalment deed, which he would not do, saying he would return it to the person who executed it; and that if they had executed the agreement, the instalment deed would have been returned at the time.

On the plaintiff's part both deeds were filed in court with papers of receipts and disbursements from 1240 to 1248; and the moonsiff, after taking the evidence of four witnesses, all of whom (one of them being the writer) spoke to the deed having been duly executed by the defendants, and that of seven witnesses for the defence, dismissed the suit on the following grounds—that the document appeared to have been drawn out on old paper with new ink; and that he was of opinion that as upwards of twelve years had elapsed since the date on which the last instalment of the instalment deed had elapsed, and no suit could be brought on it from lapse of time, the present deed had been fabricated.

Considering the reasons given by the moonsiff for rejecting the plaintiff's claim unsatisfactory, I admit the appeal, giving the usual notice to the respondents to defend it. The plaintiff (appellant) subsequently filed two books of account, and has, as has his gomashtah (agent,) sworn to their correctness. I differ entirely with the moonsiff. I see nothing in the deed to render it a suspicious document, I consider the debt fully proved and justly due; and the deed is in a great measure proved by the defendants' own statement, inasmuch as distinct allusion to certain items of payment, named by the defendants, is made in it, for instance, 16

rupees on account of roots and 44 rupees for plant. I accordingly decree the appeal, and reverse the moonsiff's decision. The usual order will issue as regards the return of the amount of stamp on which the petition is written.

THE 25TH JULY 1848.

No. 61 of 1848.

*Regular Appeal from the decision of Baboo Goorooopersaud Bose,
Moonsiff of Khandee, dated 18th March 1848.*

Chidam Ghose, (Defendant,) Appellant,

versus

Burkutoollah, (Plaintiff,) Respondent.

Rupees 51. Engagement.

THE plaintiff stated that, on the 27th Bhadur 1249, the defendant, Chidam Ghose, borrowed the sum of rupees 32, and entered into a written engagement to make over to him in the Pous following, paddy at the rate of 1 bis, 2 arrees per rupee; that of the amount borrowed, the defendant had at different times paid small sums, amounting to 22 rupees 15 annas.

Total quantity of paddy at the above calculation being 2 poutee, 2 bis, 4 arrees.

Value of the above at the market price of the month of Assar 1250, being at 9 arrees 1 pou to the rupee,	Rs. 73 15 15
Deduct paid,	22 15 0

51 0 15

The defendant, Chidam, in reply to the suit, admitted having borrowed the amount of 32 rupees on the date mentioned; but asserted that he was to pay monthly interest at the rate of one anna to the rupee; that from the month of Magh 1249 to Aghun 1253, he had paid the plaintiff, in money and paddy, sixty-four rupees, eight annas; and that the plaintiff subsequently maltreated him.

The moonsiff, having taken evidence for both parties, considered that the execution of the document was proved; and that the defendant had not satisfactorily made out his case, only one witness having deposed to the payment to each item enumerated; but that, as the plaintiff had received money payments, the terms of the engagement were broken, and he was only entitled to the

balance due after deducting the money that had been paid: he accordingly awarded the plaintiff

Rupees,	9	1
Interest,	3	7

Rs. 12 8

and costs with interest on the same till liquidated.

The defendant has appealed from this decision, but has not advanced any thing calculated to impugn the moonsiff's decision, which is hereby confirmed, and the appeal dismissed with costs.

THE 25TH JULY 1848.

No. 83 of 1848.

Regular Appeal from the decision of Baboo Goorooopersaud Bose, Moonsiff of Kandhee, dated the 20th April 1848.

Motee Lall Chowdree and Manik Lall Chowdree, guardians of Sreenath Chowdree and Tarnee Persaud, minors, (Plaintiffs,) Appellants,

versus

Koodecram Ghose, Puresh Ghose, Ram Chunder Ghose, Mohun Ghose, and Bungsee Ghose, (Defendants,) Respondents.

Rupees 14, value of mulberry plant.

THE plaintiffs sued to recover from the defendants the value of mulberry plant, said to have been destroyed by the defendants' buffaloes on 1 beegah and 5 cottahs of land, on the 5th of Aghun 1254, the estimated quantity of mulberry plant being seven bundles, at 2 rupees per bundle.

The defendants, in answer to the suit, denied that any damage had been made by their cattle, stating that the plaintiffs had sold the plant grown at the time specified to a man named Bissumbhur Mundul for 11 rupees through Mohanund Chatterjea, gomashtah of the village; and that, as the plaintiffs' mulberry cultivation was surrounded by that of others, it was strange that theirs alone should have been damaged; and that their (the defendants') buffaloes should not have been seized: they attributed the institution of the suit to a dispute regarding the price of butter and milk furnished by them to the plaintiffs on the occasion of celebrating a shraud, which had been settled by the intervention of others.

The plaintiffs, in their rejoinder, stated that they had been offered 14 rupees for the plant, which offer they had rejected; and that it was the second crop which they had sold to Bissumbhur Mundul,

which took place on the 9th of Pous 1254 ; that the cattle had been caught, but that the defendant, Ram Chunder Ghose, had rescued them.

The moonsiff caused investigation to be made by the local ameen, but, as the evidence was only hearsay, he finally dismissed the suit.

The plaintiffs, being dissatisfied, have appealed to this court ; but as I see no reason to interfere with the moonsiff's judgment, I dismiss the appeal with costs.

THE 25TH JULY 1848.

No. 86 of 1848.

Regular Appeal from the decision of Baboo Goorooopersaud Bose, Moonsiff of Kandhee, dated the 25th April 1848.

Ramgopaul Banerjea, Appellant.

The appellant appeals from the decision given in favor of the plaintiff in the following case :

Musst. Brimomoe Debea,

versus

Ramchunder Ghose and Ladoo Ghose.

Rupees 6. Arrears of rent.

THE plaintiff stated that Bhyrubnath Bhuttacharj, her father, and Hurnath Bhuttacharj, his brother, lived together in common as regards their rent-free landed property ; that neither having any son, her father, Bhyrubnath Bhuttacharj, gave his share of the property in gift to herself and her husband, Sreenath Banerjea, in the month of Magh 1239, Hurronath Bhuttacharj giving his share of the same to his daughter Panchcouree ; that subsequent to her (plaintiff's) husband's demise, she requested his father, Bhoobunnessur Banerjea, to hand over to her, her father's deed of gift, which he refused to do, but that she retained possession of her share of the property ; that the defendants held 12 beegahs of land at an annual rent of 12 rupees, of which sum she received 6 rupees, as her share of the rents for the year 1253, and brought the present suit for her share of the rents for 1254.

The defendants, in reply to the suit, said they held the land from the plaintiff and Musst. Panchcouree ; that as the plaintiff was absent at her aunt's they paid her share of the rent to her husband's father, Bhoobunnessur Banerjea, and received an acknowledgment for the same in the name of her husband's brother, Ramgopaul Banerjea, (viz. the appellant.)

While the case was pending in the moonsiff's court, Ramgopal Banerjea filed a petition, stating that the plaintiff had sold him her share of the property, and that he was in possession of the same. This the plaintiff denied, and as the defendants admitted having paid the plaintiff rent for the year 1253, the moonsiff decided the case in her favor.

From this decision the appellant has appealed to this court. As his claim, valid or invalid, can only be determined in a civil suit brought to decide upon the same, I dismiss the appeal with costs.

THE 28TH JULY 1848.

No. 89 of 1848.

Regular Appeal from the decision of Baboo Dwarkanath Rae, first grade Moonsiff of Lalbaugh, dated 27th April 1848.

Prankishen Das, (one of two Defendants,) Appellant,

versus

Rookinee Debea, widow of Muddun Mohun Mookerjea,

(Plaintiff,) Respondent.

Rupees 277-6-8. Bond.

THE plaintiff sued the defendant, Prankishen Das, and Ramlal Rae his servant, to recover the amount of a bond for rupees 250, with interest thereon, executed by the former on the 4th Bysak 1253, stating that, on the document being signed, her late husband, Muddun Mohun Mookerjea, being then at Berhampore and not having sufficient cash at the time, only advanced rupees 100; but that, on his returning to his home in the village of Bussuah, the next day the balance, viz. 150 rupees, was made over to the defendant, Ramlal Rae, who then handed over to Muddun Mohun Mookerjea the bond, which had been executed by his master, Prankishen Das.

The defendant, Prankishen Das, in answer to the suit, admitted having executed the bond, and pleaded that he had appointed the late Muddun Mohun Mookerjea's brother, Oomakaunt Mookerjea, manager of a village named Bhuddurpoor, on the understanding that the latter was to advance rupees 250, and that he (plaintiff) executed the deed in favor of his brother, Muddun Mohun Mookerjea, giving Oomakaunt Mookerjea a written order to deduct the amount from the rents of the village and pay his brother, but that he, defendant, never received the money.

The defendant, Ramlal Rae, admitted the circumstances set forth in the plaint, but denied having received any portion of the money.

On the part of the plaintiff the bond and the defendant Prankishen Das's order on Oomakaunt Mookerjea were filed, and witnesses examined; and as all the circumstances urged by the

plaintiff were fully established, the moonsiff, in the absence of any proof on behalf of the defendants, decreed the case in the plaintiff's favor against the defendants, Prankishen Das and Ramlal Rae, stating that, although the latter defendant denied having received the balance of rupees 150, his having done so was proved, but that he made it over to the defendant, Prankishen Das, was not established.

From this judgment the defendant, Prankishen Das, has appealed to this court; but as he has not advanced any thing calculated to impugn the moonsiff's decision, I confirm the same, and dismiss the appeal with costs.

THE 28TH JULY 1848.

No. 98 of 1848.

Regular Appeal from the decision of Baboo Dwarkanath Roy, first grade Moonsiff of Lalbaugh, dated the 16th May 1848.

Mr. Mordaunt, (Defendant,) Appellant,

versus

Omda Khanum, (Plaintiff,) Respondent.

Rupees 64. House rent.

THE plaintiff sued to recover from the defendant house rent due from the month of Bysak 1253 to Sawun 1254, stating that, on the 15th Bysak 1253, the defendant engaged a house in Seraj-doo-Dowlah bazar, at a monthly rent of four rupees, that he liquidated the rent up to Cheyt of that year, and then fastened the house, and went elsewhere.

The defendant did not reply to the suit, which was instituted on the 17th August 1847, till the 15th April 1848, a period of eight months; he denied having rented any house from the plaintiff, pleading that in Bysak 1252, he hired one in Seraj-doo-Dowlah bazar from Chootce Begum, who appears to be the plaintiff's mother, at a rent of rupees 2-8 per mensem, giving an agreement to retain the same for two years; that in the month of Assar 1253, when going to Rungpore, he demanded the return of his engagement, which was refused unless he paid the stipulated rent for the two years, which he objected to pay.

The plaintiff having produced witnesses as to the defendant's engaging the house under the terms specified, the moonsiff, in the absence of any proof on the part of the defendant, decreed the case in the plaintiff's favor.

The defendant has appealed to this court, but has not brought forward any thing calculated to impugn the moonsiff's decision, and I therefore affirm the same, and dismiss the appeal with costs.

THE 29TH JULY 1848.

No. 99 of 1848.

*Regular Appeal from the decision of Moulvee Mahomed Mobeen,
Moonsiff of Gowas, dated the 29th May 1848.*

Juggoo Shekh, (Plaintiff,) Appellant,

versus

Gopaul Mundul, Ramlal Mundul, and Madhub Mundul,
(Defendants,) Respondents.

Rupees 13, 6 annas, 8 gundahs. Hire of bullocks.

THE particulars of this case are fully detailed at pages 56 and 57 of the Decisions of city court of Moorsledabad for the year 1847. On the last occasion the case was remanded for re-trial for reasons therein stated, the moonsiff, having again investigated the case, was of opinion that the defendants proved their objections, and dismissed the plaintiff's claim. From this decision the plaintiff has appealed; but as I consider that the moonsiff's judgment is correct, I dismiss the appeal with costs.

THE 29TH JULY 1848.

No. 104 of 1848.

*Regular Appeal from the decision of Moulvee Mahomed Mobeen,
Moonsiff of Gowas, dated the 29th May 1848.*

Baburdee Sheikh, (one of two Defendants,) Appellant,

versus

Rajiblochun Biswas, (Plaintiff,) Respondent.

Rupees 63-9-3. Bond.

THE plaintiff sued to recover the balance, due on a bond entered into by the two defendants, Baburdee Sheikh and Atabdee Sheikh, for 56 rupees, on the 15th Mang 1250 B. S., payable by making over to him gram in the month of Cheit following to that value. Amount borrowed, Rs. 56 0 0
Deduct gram received on the 28th Cheit, 12 8 0

Balance due,	Rs.	43	8	0
Interest thereon,		20	1	3
Total sued for,	Rs.	63	9	3

The defendant, Baburdee, denied all knowledge of the document, and pleaded that he had no cultivation of any kind, and that the suit had been instituted at the instigation of a person named

Kasheenath Chowdree, in consequence of his having given evidence in favor of the defendant, Atabdee Sheikh and Domun Sheikh, in a civil suit brought against them by Thakoor Das Chatterjea, on the part of Kasheenath Chowdree.

The defendant, Atabdee, also denied the instrument, and pleaded that he had grown gram on some ground, which he held with Domun Sheikh, but that it was not sufficient to enable him to borrow money to so large an amount; that he had nothing to do with the defendant, Baburdee, and that he went to Burdwan on the 2d Magh 1250 B. S., where he had employment in his capacity of a bricklayer until the month of Phalgun, and did not return home till 2d Cheit of that year.

The moonsiff rejected the evidence on the part of the defendants as generally unsatisfactory, and that the defendant Baburdee's witnesses were his relations; and, considering that the execution of the bond by the defendants was established by the evidence of the attesting witnesses, and the man who engrossed it, awarded judgment in the plaintiff's favor.

The defendant, Baburdee, being dissatisfied, has appealed from the moonsiff's decision, which I am of opinion is perfectly correct, and in confirming the same, I dismiss the appeal with costs.

THE 29TH JULY 1848.

No. 13 of 1848.

Regular Appeal from the decision of Moulvee Syed Abdool Wahid Khan, 1st grade Principal Sudder Ameen of Moorshedabad, dated 8th May 1848.

Rajmoe Chowdrain, mother of Gopeekishen Chowdree, Zemindar of Choonakhalee, (Plaintiff,) Appellant,

versus

Sreemuttee Bewa, Muddun Sircar, and Manikmonee Bewa,
(Defendants,) Respondents.

Rupees 122. To resume lakhiraj land.

THE particulars of this case are detailed at pages 40 and 41 of the Decisions of the city court of Moorshedabad for 1847. The principal sudder ameen having omitted to enquire into some points therein indicated, the suit was remanded for further investigation. That officer, having completed the necessary investigation, adhered to his former judgment and dismissed the plaintiff's claim, the land never having been subject to any assessment and being duly registered in the collector's office as rent-free. In support of his opinion the principal sudder ameen alludes to a decision of the Superior Court, copy of which is filed in the present case.

The plaintiff, being dissatisfied, has appealed to this court, but as I consider that the judgment of the principal sudder ameen is perfectly consistent with justice, I dismiss the appeal with costs.

THE 31ST JULY 1848.

No. 12 of 1848.

Regular Appeal from the decision of Baboo Sheeb Chunder Mookerjee, Sudder Ameen of Moorshedabad, dated 30th March 1848.

Musst. Hossceinee Begum, (one of three Defendants,)

Appellant,

versus

Nowab Syed Asufoodeen Khan, (Plaintiff,) Respondent.

Rupees 792-8. For possession of land.

THE plaintiff instituted this suit against Musst. Hosseinee Begum, Musst. Bunnoo, and Moonsheer Kullunder Buksh, for the purpose of foreclosing a mortgage and rendering the sale conclusive, stating that on the 12th Jeit 1248, Musst. Hossceinee Begum, widow of the late Mahomed Hossein and mother of Mahomed Tukee, sold him, through his attorney, Kullunder Buksh, 3 beegahs, 13 cottas of rent-free land appertaining to the village of Gookhaneh, for the sum of rupees 250; that the deed of conditional sale was drawn out in favor of Musst. Bunnoo, his (plaintiff's) wife, who executed and handed over to Musst. Hosseinee Begum an ikrar or deed engaging that the deed of sale should be null and void in case of the money advanced being repaid within the stipulated time; that after taking the usual steps required by Regulation XVII. 1806, he sued for possession, assuming the value of each beegah at

10 Sicca rupees,	36	8	0
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being at 18 times value, ..	Sa. Rs...	657	0	0
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or Company's rupees,		700	8	5
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Value of trees, &c.,		16	0	0
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Mesne profits from Bhadur 1252 to				
Cheit 1253,		66	16	0

Interest,		9	2	0
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Amount of suit, Company's rupees,	92	8	5	
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Musst. Hosseinee Begum, in answer to the suit, pleaded that Musst. Bunnoo herself advanced the money, and that if the plaintiff had any thing to do with the transaction he would have had the deed of conditional sale drawn out in favor of some dependant rather than his wife, that on the 2d Jeit 1251 she repaid the whole of the amount borrowed with interest, being in

the aggregate rupees 340, and received an acknowledgment for the same from Musst. Bunnoo, who said that she would search for the deed of sale and return it; that she (Hosseinee Begum) was not aware of the measures taken under Regulation XVII. 1806; that the receipt to the notice issued by the court was not hers; that she was in the habit of using a seal, and that were it hers it would bear an impression of it.

Musst. Bunnoo, in reply to the suit, sided with the defendant, Musst. Hosseinee, also denying any knowledge of the proceedings under Regulation XVII. 1806.

The defendant, Kullunder Buksh, sided with the plaintiff.

The sudder ameen considered that the plaintiff had proved his case, stating that the defendant had not produced any proof, and that if the deed really belonged to Musst. Bunnoo it was singular how it came into the plaintiff's possession.

From this decision both Musst. Hosseinee Begum and Musst. Bunnoo have appealed under separate numbers. I find that the receipt to the notice prescribed by Section 8, Regulation XVII. 1806, has not been proved. Such being the case, it was incumbent on the sudder ameen to have conformed with the requisition of Construction No. 1140, and to have nonsuited the plaintiff: his decision therefore is illegal. I accordingly decree the appeal, and reverse the same, and return the case to the sudder ameen, who will dispose of the case according to law.

The usual order will issue as regards the value of the stamp paper on which the petition of appeal is engrossed.

THE 31ST JULY 1848.

No. 13 of 1848.

Regular Appeal from the decision of Baboo Sheeb Chunder Mookerjee, Sudder Ameen of Moorshedabad, dated 30th March 1848.

Musst. Bunnoo Begum, (Defendant,) Appellant,

versus

Nawab Syed Asufoodeen Ali Khan, (Plaintiff,) Respondent.

Rupees. 792-8: For possession of land.

THE facts and circumstances of this case are the same as in the foregoing, and the decision passed is similar.

The usual order will issue regarding the return of the amount of stamp on which the petition of appeal is engrossed.

ZILLAH PATNA.

PRESENT: R. J. LOUGHNAN, Esq., JUDGE.

THE 18TH JULY 1848.

No. 4 of 1847.

Original Suit.

Mrs. Amelia Sarah Boilard and Mr. John Alexander Boilard, heirs
to the late Mr. John Lewis Lenancker, Plaintiffs,

versus

Munna Singh, Defendant.

SUIT, laid at Company's rupees 1,566-11-5, for recovery of amount embezzled.

The plaint states that defendant, being in the service of the late Lenancker as kizanchee, had charge of monies belonging to him, for which he used to account; and that he embezzled the sum of Company's rupees 1,327-11-0, as shewn by a wasil bakee account in Hindee, and an account book in English. Defendant denied the charge; denied that he was cash-keeper to the deceased, saying that Lenancker kept, received, and paid out his cash himself; defendant being employed to examine the coin and keep the accounts in Hindee; and pleaded that his master, subsequent to the time of the alleged embezzlement, left him by his will a legacy of 1,500 rupees as a reward for faithful service, bestowed upon him other gifts, and gave him a certificate of good conduct.

The accounts adduced by the plaintiffs, in proof of the charge, are, an account entered in an English account book and an account in Hindee, called a jumma wasil bakee. The English account is a private account current. The debits against Munna Singh are for money received, or articles purchased from his master. The balance was not struck, or the account closed in the life time of Lenancker, for the balance is entered in these words: "Balance due to the estate of the late Mr. Lenancker." It is not signed by Munna Singh. The witness, Charles Francis, deposed that he was the writer of this account; that he entered each item, both of debit and credit, on the very date on which it appears debited or credited; that he did so by dictation of Lenancker, who took the items from the Hindee account book of defendant—defendant being present and reading them out on each occasion. Fukeer Chund and other witnesses deposed that Fukeer Chund wrote his Hindee jumma wasil bakee,

abovementioned, on the same occasion, also taking it from the Hindee account book kept by defendant. They and Francis state that the balance was struck in the presence of defendant and the deceased Lenancker. This witness prevaricated disgracefully in his deposition; and I was doubtful whether he should not have been put on his defence for perjury till he endeavoured to account for the blunders in his deposition by declaring that he was not well acquainted with the Hindoostance language, in which his second examination was commenced. As, however, the witnesses say that the Hindee account and the English one were made out simultaneously, and it is clear that the English one was not closed till after Lenancker's death, their statement relative to the balance being read out in presence of defendant and Lenancker, cannot be credited.

This accounts in some degree for the English account book itself not being at once filed in proof of the balance by the plaintiffs; and for the hesitation in filing it, when it was called for by the judge, upon which hesitation the defendant grounded a plea that default had been committed by the plaintiffs.

It is observable that the book filed by plaintiffs is a sort of ledger, in which are entered the debtor and creditor accounts of many individuals with Lenancker: two pages or more being appropriated to each account. These accounts appear to have been entered in the order in which they were opened; and Lenancker's private accounts of receipts and disbursements of the income from his estates and so forth are interspersed, or rather the continuation of his own monthly accounts is interrupted by these accounts of his with other individuals; but the entries are not quite regular in the order of the dates; there being several accounts, opened subsequently to that with Munna Singh, entered previous to his account; and the continuation of the general account of Lenancker's income on page 14, the page immediately following that on which Munna Singh's account is entered, begins with 11th July 1843, whereas Munna Singh's account purports to have been opened subsequently, viz. on the 1st January 1844. The witness, Francis, has explained this by saying that the English accounts were not regularly written up, but remained often in arrear, and were afterwards written up from the Hindee accounts. In fact it is quite clear that the Hindee accounts, which have not been produced, were the foundation from which the English ones were constructed.

How many items may have been entered in the Hindee account book, which ought to have been also credited in the English one, cannot appear, as the plaintiffs have thought proper to ground their claim upon the latter, withholding the former from the inspection of the court.

The witnesses called by the defendant, say that he was not usually in charge of Lenancker's cash; and some of them state that

Lenancker admitted the settlement of such an account as the plaintiffs have sought to establish.

Had this account been proved, it could not have established any thing more than that there was a balance due on an account current by Munna Singh to Lenancker; it would have been worthless as proof of the embezzlement by defendant of funds entrusted to him by Lenancker.

It is quite impossible, however, for me to give credit to the witnesses brought to prove this account, for the reasons already stated; and I therefore dismiss the plaintiffs' suit, and decree costs against them, with interest to the date of payment.

THE 19TH JULY 1848.

No. 85 of 1846.

Appeal from the decision of Ahmud Buksh, formerly Sudder Ameen, under date 27th November 1846.

Gopal Panday, (Plaintiff,) Appellant,

versus

Khama Sing, (Defendant,) Respondent.

SURT laid at Company's rupees 467-15-8, to reverse a summary award for rent.

The defendant, as admitted in the plaint, is the purchaser at auction held in execution of decree of the rights of Mussummat Mujjoo, from whom plaintiff asserts, and defendant admits, that he held the estate under a deed of lease, or ijara, dating prior to the sale. The plaintiff's plea is, that he was in possession of the lands by virtue of the deed of lease, at the time the award was made, and therefore to decree the rent of them to the defendant was wrong. The defendant, in reply, stated that the lease not being a conditional one, lapsing only on the repayment of a loan, as plaintiff asserted it was, and plaintiff not being in possession of the lands, the award was correct.

The sudder ameen, in the proceeding held under Section 10 of Regulation XXVI. of 1814, required from plaintiff full proof of the advance of the loan and of the nature of the lease, and on the ground of the failure of this proof, dismissed the suit.

The appellant, among other reasons for his appeal, points out the irregularity of the investigation and decision in this, that in deciding the point of the establishment of the bond (tumusook) alleged to have been granted by Mujjoo, which was for the sum of rupees 2,201, he has disposed of a case beyond his competency to dispose of.

I am of opinion that the sudder ameen ought to have confined his investigation to the question whether the plaintiff was or was not

in possession of the property, the rent of which was awarded at the time of the award, because on that depended the propriety of the judgment, as the collector had no jurisdiction upon the point of the relative rights of the parties in this case, but was restricted to requiring proof of possession in the plaintiff and of the arrear being due by the under tenants.

The case must therefore be remanded for re-trial solely on the point of possession. I therefore decree the appeal, and, reversing the decision of the sudder ameen, remand the case to the court of the principal sudder ameen; the court of the sudder ameen having been abolished. The value of the stamp on the petition of appeal will be returned to the appellant.

THE 20TH JULY 1848.

No. 80.

Appeal from the decision of Moulvee Ahmud Buksh, then Sudder Ameen, dated 19th November 1846.

Shah Shurnf Alli, agent of Musst. Edun, (Plaintiff,) Appellant,

versus

Musst. Mango, Mithoo Singh, Jugunnath Singh, and others,
(Defendants,) Respondents.

SUIT laid at rupees 393-12-0, for possession of a four annas share of mouzah Bikrumpore, pergunnah Pelich, by the completion of the sale under a contract of sale "by byana," dated 12th Aghun 1252.

The plaintiff sued Mango as heir of the person contracting, and the other defendants as parties, who, having obtained a farm, or theeka, of the property in litigation, in consideration of a loan of money, opposed the fulfilment of the contract by Mango, by causing a notice forbidding the alienation of the property to issue from the court of the sudder ameen. The sudder ameen was of opinion that, as the deed was a mere contract, ikrarnamah, to sell after one month, for the sum of rupees 1,300, in consideration of earnest money, byana, amounting to rupees 281 paid, the property was pledged for the repayment of the loan of Jugunnath Singh and others; a notice had issued from the civil court, forbidding the alienation of the property before any bill or deed of absolute sale had been executed; and the deed contained no such condition as that on failure of the contractor to grant the bill of sale, it was to be considered as a bill of sale, therefore the sale was incomplete, and the plaintiff had acquired no right over the property, nor could the transfer be permitted. On these grounds the sudder ameen dismissed the suit.

First. The property cannot be considered as pledged by a deed of lease, such as is pleaded by Mithoo Singh, Jugunnath Singh, and others of the defendants, (who did not appear according to notice duly served on them in the appeal), or at least the pledge is not of such a nature as would bar the sale of the right and title of the borrower, because such sale would not cancel the engagements he had previously entered into. *Secondly.* The plaintiff had acquired a right over the property, and was entitled by the contract to obtain possession upon it by the payment of the price stipulated within the period fixed by the contract, as was clearly ruled in the decision passed by the Court of Sudder Dewanny Adawlut, on the 17th August 1814, in the suit of Ram Govind *versus* Beharee Lal. *Thirdly.* The notice issued by the court, relative to this property, forbids the alienation of one party's rights to another party subsequent to the date of the notice, and cannot be construed as annulling the rights already acquired by plaintiff under the contract in question, as above set forth.

The decision appears to me for these reasons to be wrong. I therefore reverse it, and decree for appellant, plaintiff,—directing that, on depositing in this court the balance of the price stipulated in the contract of sale, viz. rupees 1,019, within two weeks from the date of this decree, appellant be placed in possession of the property sued for. Costs, with interest to the date of payment, will be paid by respondents. The respondent, Mango, may receive the balance of the purchase money as soon as deposited (of which due notice will be issued to her) by application to this court.

THE 20TH JULY 1848.

No. 81.

Appeal from the decision of Moulvee Ahmud Buksh, then Sudder Ameen, dated 16th November 1846.

Shah Mahomed Hossein, (Defendant,) Appellant,

versus

Shah Shuruf Alli, (Plaintiff,) Respondent.

SUIT, laid at 200 rupees, to obtain the annulment of a sale made by an alleged deed of sale in favor of Mahomed Hossein.

The ground of this action is a deed of sale granted by the same seller in favor of the plaintiff on a date, viz. 31st December 1844, prior to that in favor of Mahomed Hossein, appellant. It was pleaded, in reply, that that of the 31st December 1844, which was filed on the proceedings by appellant, had never been carried into effect; a part of the purchase money, which amounted to rupees 150, having been withheld altogether, the sum of 99 rupees only having been deposited in the office of the kazee before whom the deed was executed.

The sudder ameen decreed in favor of the plaintiff, on the ground that the possession of the parties to the contract on the things exchanged is not an essential condition to the validity of the sale, which having been completed, and never having been annulled, must be upheld. It is to be presumed that, in the opinion of the sudder ameen, this decision is based upon the Mahomedan law; but it was irregular in him to decide a point of law without an exposition of the law from the law officer. But further, he has taken no notice of the fact that both deeds of sale date subsequent to the enactment of Act XIX. of 1843; and the deed sought to be annulled alone is asserted to be registered, and yet no enquiry as to its authenticity was made. The investigation and decision are therefore incomplete and faulty. I therefore reverse the decision, and remand the case to the court of the principal sudder ameen, that of the sudder ameen having been closed, to be tried anew with advertence to the above remarks. The costs of this appeal will be awarded by the lower court against the party who may be cast.

THE 22^d JULY 1848.

No. 86.

Appeal from the decision of Moultzee Ahmed Buksh, then Sudder Ameen, passed on the 10th June 1846.

Dursun Singh, (Plaintiff,) Appellant,

versus

Khoob Lal, (Defendant,) Respondent.

SUIT, laid at rupees 711, to get plaintiff's name substituted for that of defendant in the proceeding of settlement, as the proprietor entitled to malikana on a two anna share of mouzah Sumera, pergunnah Gayaspore.

The grounds of this suit may be thus briefly stated from the plaint. That the above property belonged to the estate of the late Jugunnarain Singh; that plaintiff succeeded to it as his heir, and his name having been substituted in the collector's register as proprietor for that of Jugunnarain Singh, on the application of the said deceased's widow, Chain Koor, he was in possession when a decree was passed against Chain Koor; and in execution her right and title in this property was sold to Khoob Lal and Mitrjeet Singh; the property had been held rent-free, and, on its resumption, was settled with the lakhirajdars; but although plaintiff's name was registered as proprietor, the settlement officer recorded the names of the purchasers of the rights of Chain Koor, who herself never had any title, as proprietors entitled to malikana, in the record, or roobakaree of settlement.

The investigation in this case appears to me to be incomplete, and the decision faulty, and grounded on a false view of the points in debate.

The plaintiff, though this is not very clearly expressed in the plaint, evidently means to deny the right of Chain Koor, and to assert his own as heir to Jugunnarain Singh; and it is evident that nothing short of the proof of this point will suffice for a decree to pass, ejecting parties who have been many years in undisturbed possession as successors by purchase to Chain Koor; nevertheless in the proceeding under the 10th Section of Regulation XXVI. of 1814, the sudder ameen has required proof from plaintiff only of his possession as heir to Jugunnarain Singh.

I therefore admit the appeal, and remand the case to the court of the principal sudder ameen, that of the sudder ameen having been closed, for the trial of the right of appellant as heir.

The value of the stamp of this appeal will be refunded to the appellant.

THE 24TH JULY 1848.

No. 1 of 1847.

Appeal from the decision of Mr. E. Da Costa, Principal Sudder Ameen of Patna, dated 28th November 1846.

Kasheenath, Mokhtyar of Moulvee Mahomed Issa, and others,
(Defendants,) Appellants,

versus

Shewuk Tewaree, (Plaintiff,) Respondent.

SUIT to be maintained in possession of certain lands by right of cultivation, valued at rupees 1,362-8.

Plaintiff claimed to hold his lands at a fixed rent of rupees 102, under a pottah, dated in 1196 F.; and the principal sudder ameen, finding the pottah not proved, and even of no avail had it been so, and finding that plaintiff had executed a kubooleet, engaging to pay rupees 154-2-9 for the said lands, passed a decree in his favor, upholding his possession on the lands in his cultivation according to pottah, dated 16th Jeyt 1250 F., at a jumma of rupees 154-2-9 per annum, and adjudged the defendants to pay the costs.

They appeal against this decision, urging that plaintiff's pleas having been decided unfounded, the suit should have been dismissed; that according to Regulation V. of 1812, Section 10, the parent mehal, in which the land is situated, having been sold at auction for arrears of revenue, as stated by the principal sudder ameen in his decision, all under tenures became liable to annulment; that he had the power of ejecting the plaintiff for arrears of his rent of which there was still a balance due for 1252, notwithstanding recourse to

distress and sale of his effects; and that the decision had been passed in spite of proof of these facts; that the decision is contrary to the merits of the case, the grounds of the suit having been pronounced invalid, and therefore also it was unjust to award costs against the defendant.

It appears that, although the defendant had mentioned in his answer that plaintiff had incurred liability to ejectment by leaving his rent unpaid, proof of that allegation was not required in the lower court from him, and the issue was not at all upon that point. The question for decision, as it was clearly stated in the decree, was, whether the pottah under which plaintiff claimed to hold the lands, or that on which the defendant stated that he held them, was good and valid. The principal sudder ameen, I am of opinion, was quite right in deciding this question according to the defendants' statement, and consequently wrong in decreeing in favor of the plaintiff. I therefore decree the appeal, and, reversing the decision of the principal sudder ameen, dismiss the suit, directing costs of both courts, with interest to the date of recovery, to be paid by the plaintiff.

THE 25TH JULY 1848.

No. 14.

Appeal from the decision of Mr. E. Da Costa Principal Sudder Ameen, passed on 9th April 1847.

Moost. Himmutoonnissa, (Plaintiff,) Appellant,

versus

Meer Ultraf Alli and others, (Defendants,) Respondents.

SUIT, laid at rupees 1,600, for possession on mouzah Kootera, pergunnah Gyaspore, under a deed of bye mookasa.

This suit was dismissed by the principal sudder ameen on several grounds, one of which is as follows: "The deed of bye mookasa was not made over to the plaintiff in the prescribed manner; and it is therefore invalid according to Mahomedan law, as specified by the futwa filed by the defendants." It is pleaded in the appeal that this futwa not being a futwa of the law officer of the court, it was irregular to ground the decision of a point of law upon it.

I find that the futwa is not a futwa of the law officer of the court, and therefore the decision of the question was not conformable to Sections 15 and 16 of Regulation IV. of 1793, which prescribes the mode in which the law is to be expounded to the presiding judge.

I therefore admit the appeal, and, reversing the decision, remand the case to the lower court, to be again tried with reference to the above remarks. The value of the stamp will be returned to the appellant.

THE 26TH JULY 1848.

No. 16.

Appeal from the decision of Mr. E. DaCosta, Principal Sudder Ameen, dated 19th April 1847.

Jugurnath Pershad, (Plaintiff,) Appellant,

versus

Bishun Chund and Mundowun Sahoo, (Defendants,) Respondents.

SUIT, laid at rupees 2,029-5-1, for the amount, with interest, of a bond executed by Mundowun, defendant, on the 10th July 1846.

The defendant, Bishun Chund, denied the receipt of the money, and the execution of the bond; and asserted that the suit was an attempt at fraud similar to attempts of the same nature made by one Chotoo Lall upon his son, the other defendant, Mundowun Sahoo, and that the fraud in both cases was abetted by a witness named Jhubba Lall, whose signature as witness was attached to the bonds in both those cases as well as to the bond in this case. In proof he adduced copy of a petition presented to the sudder ameen by Chotoo Lall, admitting the fraudulency of his attempting to obtain by the aid of Jhubba Lall, witness to this bond, the sum of 500 rupees by suit in court for a loan of only 100 rupees advanced to Mundowun Sahoo, and copies of the decisions in that case, and in a second case in the moonsiff's court against the same Mundowun Sahoo, in which last he was content to take 20 rupees in lieu of his claim of 100 rupees. Mundowun Sahoo pleaded that the plaintiff induced him to sign the bond by a trick, promising by means thereof to obtain the amount of the bond from his father for his use. Several copies of petitions put in by the first named defendant in the judge's and magistrate's courts and registry office, complaining against Mulungee Missur for having fraudently obtained a bond from his son, who was a young man of extravagant and irregular habits, and giving notice that he would not be answerable for any documents of the sort which he might be entrapped by designing persons into signing, were also filed in this case.

The principal sudder ameen was of opinion that the evidence of the witnesses to the bond was unsatisfactory and inconclusive, particularly as to the payment of the money; and that the evidence of an intended fraud on the defendants, afforded by the documents given in by them, was very strong: he therefore dismissed the suit.

The appellant contends that the evidence of the witnesses to the bond is strong, consistent, complete, and ought to have been satisfactory both as to the signing the bond and the receipt of the money by Mundowun Sahoo; secondly, that Chotoo Lall's petition and the decisions upon his two suits were arranged and contrived by him, in collusion with the defendants, with the express view of defeating the lawful and just object of this suit.

I have carefully perused all the evidence to the bond, and am not better satisfied with it than the principal sudder ameen. From that of Sheo Sahai, who from his position as a vakeel in the court of one of the moonsiffs, is entitled to more credit than others, and whom of course it behoved to be circumspect in such matters, it appears that he entertained some misgivings, for when he was asked to sign as a witness, he marked that he saw no money, and declined to witness until the plaintiff produced two bags of money, and placed them in front of Mundowun Sahoo, defendant. The witness then signed; but it does not appear that the money was delivered before he left the place. Choonce Lall, another witness, also left the place before the delivery of the money. There are indeed other witnesses whose signatures are attached to the bond, who speak very explicitly to the payment; I cannot, however, think their testimony credible under the circumstances. For the character of the defendant, Mundowun, is shewn by his father's petitions to have been such that no money lender can be supposed foolish enough to have advanced him so large a sum of money without any sort of security, but the bare probability that his father would pay for him; and if the money had been advanced jointly to both, surely both would have been present and would have signed the bond. I therefore can see no ground to interfere with the decision, which I therefore confirm and reject the appeal.

THE 31ST JULY 1848.

No. 15.

Appeal from the decision of Moulvee Mahomed Ibrahim, Additional Principal Sudder Ameen, dated 19th November 1846.

Keerut Chund, (Plaintiff,) Appellant,

versus

Kunhya Lall, (Defendant,) Respondent.

SUIT, laid at rupees 1,742-1-10, to recover proportion of revenue paid into the collector's treasury on account of defendant's share of an estate.

The date of this appeal is the 7th May 1847, consequently it appears not to have been presented within the period prescribed by the regulation. The suit, however, had been dismissed without a full consideration of the merits, and appealed summarily on that ground, and the summary appeal was decided on the 10th April 1847. From copies of decisions in appeal of the courts of this city, viz. one of a former judge, Mr. Smelt, of the 5th June 1844, and another of the principal sudder ameen, Mr. DaCosta, dated 20th July of the current year, filed by the appellant, it appears to have

been the practice to admit regular appeals, if preferred within a month from the date of the decision of a summary appeal in the same case, by the appellant. Moreover such practice seems in some degree warranted by Construction No. 1127, of the 2d February 1838, on the subject of the deduction of the time during which a case may have been under review, or pending an order on an application for review. The summary appeal was in this case lost solely in consequence of the omission of the appellant to file a copy of the decision; and if that form had been observed, doubtless the object of the appeal, which was an investigation of the merits, would have been granted, for the principal sudder ameen's decision was clearly wrong upon the face of it. It may be said that the appellant could not bring his regular appeal while the summary one was pending, and the admission of an appeal after the lapse of the prescribed period is so clearly requisite for the ends of justice, that a stronger special ground could not I think be urged.

The reason of the principal sudder ameen for dismissing the suit without a hearing on the merits is simply this, that the collector, as the representative of the Court of Wards, should have instituted this suit, because the proprietor on whose behalf plaintiff sued as his guardian, was under his guardianship. This reason is futile, for the estate on account of which the money was said to have been advanced evidently cannot have been, according to Section 3 of Regulation X. of 1793, under the Court of Wards; and the plaintiff holds the appointment of guardian from the civil court for the custody of such property of the disqualified proprietor as is not under that court.

Under these circumstances I admit the appeal, and, reversing the additional principal sudder ameen's decision, remand the suit to the court of the principal sudder ameen to be tried upon its merits. The value of the stamp will be returned to the appellant.

ZILLAH RAJSHAHYE.

PRESENT : G. C. CHEAP, Esq., JUDGE.

THE 7TH JULY 1848.

No. 112 of 1846.

Appeal from the decision of Moulvee Mahomed Ullee, Moonsiff of Nattore, dated the 17th July 1846.

Babun Shah, (Defendant,) Appellant,

versus

Ram Munnee Dassea, (Plaintiff,) Respondent.

THE respondent sued the appellant and others, to recover rupees 50, being principal and interest due under a bond alleged to have been given by them on the 10th Phagoon 1251 B. S.; and the moonsiff, holding the execution of the bond fully proved, gave the respondent a decree. Against this decision the appellant *alone* appeals. He before denied signing the bond, and which he asserted was fabricated. The grounds of his appeal are to the same effect; but it appears from the evidence that the appellant himself wrote the bond, and no reason is assigned for the respondent bringing a false suit, and more, it would appear from the deposition of the mohurir of the moonsiff's court that the appellant voluntarily gave a *kistbundee*, or instalment bond, to liquidate the decree. I therefore see no reason for disturbing the moonsiff's decision, which is hereby affirmed, and the appeal dismissed, with costs.

THE 7TH JULY 1848.

No. 16 of 1848.*

Appeal from the decision of Moulvee Sadut Ullee, Moonsiff of Bauleah, dated the 29th January 1848.

Mehroo Beebee, widow of Suffur Ali, deceased, (Defendant,)

Appellant,

versus

Shekh Ketabdee, (Plaintiff,) Respondent.

THIS was a suit to recover rupees 130, principal and interest of a bond alleged to have been given by the appellant, Dhun Beebee,

and Suffur Ali, to the respondent, on the 17th Poos 1251 B. S.; and the moonsiff gave the respondent a decree against the appellant and heirs of Dhun Beebee and Suffur Ali (both of whom have died.) The appellant denies *in toto* the loan, pleads that the respondent being only a *burkundauz* could not have had so much money to lend, and refers to a family and of course a female dispute. The respondent insists the money was lent to enable them to redeem some ornaments pledged by Suffur Ali, the appellant's husband, with Byrubdan and Tuktmul Baboos. The appeal was admitted on the 28th April last, and the latter, who was summoned, has appeared, and, on a solemn declaration, states that Suffur Ali pledged, on the 11th Assar 1250 B. S., some ornaments for rupees 75, and on the 16th Poos 1251 B. S. he took him to Dhun Beebee's house, when he paid him the money with interest due on the pledge, and he gave up the ornaments. The respondent was then also examined on a solemn declaration, and deposes to the loan in Poos, and that the ornaments (to be redeemed) belonged to his wife, who had lent them to Suffur Ali to pledge, who was cousin to Mehroo Beebee appellant. The only discrepancy is, that the bond is dated the 17th, when the ornaments were redeemed from pledge on the 16th of Poos 1251 B. S. It is possible this error in the date originated in the writer of the bond; and who, it is alleged, was Suffur Ali, deceased; and the certificate on the stamp shows it was sold to him on the 16th of Poos 1251 B. S. I am satisfied the money was lent, and therefore the moonsiff's decision must be affirmed, and the appeal dismissed, with costs.

THE 8TH JULY 1848.

No. 155 of 1846.

Appeal from the decision of Sreenath Biddyabagish, Moonsiff of Bograh, dated the 23d November 1846.

Pulan Mundul, (Plaintiff,) Appellant,

versus

Kullum Nussou and Ullee Nussou, (Defendants,) Respondents.

THE appellant sued to recover 19 rupees, 12 annas, and 10 pies, being principal and interest due under a bond, alleged to have been given by the respondents to appellant on the 16th Maug 1248 B. S., for rupees 13. The moonsiff dismissed the suit, not crediting the witnesses to the execution of the bond and payment of the sum stated to the respondents. Against this decision the appellant appeals; and I have gone through the whole evidence.

The loan and execution of the bond are fully proved. The defendants' pleas were, they had before left Luskureeparrah for Hosainpoor, and that the suit was brought through enmity, because Ullee would not let one of his sons engage himself to the appellant as a servant. All that these witnesses prove is, that father and son ran away to Hosainpoor. All the other pleas are not proved, and, if they had been, would have been no defence in law. Independent of the two witnesses to the bond, there are two who depose to the defendant Kullum afterwards wishing to settle with the plaintiff's son. I cannot therefore concur with the moonsiff that the appellant's witnesses were not deserving of credit; on the contrary that they have fully proved his claim, and are deserving of credit. Consequently, I decree the appeal and claim, and reverse the moonsiff's decision: all costs in both courts to be paid by the respondents.

THE 8TH JULY 1848.

No. 13 of 1847.

Appeal from the decision of Moonshee Ahmud Ullee, Moonsiff of Dhoobulhuttee, dated the 12th December 1846.

Fuqeer Mahomed Paramanik and Keenoo Mundul, (Defendants,) Appellants,

versus

Gourmohun Shah, (Plaintiff,) Respondent.

THE respondent sued to recover 107 rupees, 8 annas, being principal and interest due, it was alleged, under a bond for rupees 100, dated the 20th Poos 1252 B. S., given by appellant to the respondent's gomashtah. The defendant pleaded that the suit was instituted through enmity at the instance of Roopmunjoree Chowdrain, a zemindar, because one of them, Fuqeer Mahomud, had complained against her at the thannah for disposessing their (defendants') zemindar. The moonsiff called upon the defendants to give proof of this plea; but they gave none, and the moonsiff, on the evidence to the execution of the bond, decreed the claim. Against this decision the appellants appeal, again repeating what they had stated in their answer, and, when asked, their vakeel states he has no documents or proof. As the appellants failed to establish their pleas before the moonsiff, and there are no grounds for supposing the suit to be a false or fictitious one, I therefore affirm the moonsiff's decision, and dismiss the appeal.

THE 11TH JULY 1848.

No. 20 of 1847.

Appeal from the decision of Moonshee Ahmud Ullee, Moonsiff of Dhoobulhuttee, dated the 13th January 1847.

Sameer Mundul, (Defendant,) Appellant,

versus

Nubkoomar Chakee, (Plaintiff,) Respondent.

THE respondent instituted this suit to recover rupees 111, 4 annas, being principal and interest of a bond, bearing date the 26th Bhadoon 1252 B. S., for rupees 100. The defendant pleaded an *alibi*, and that the suit was a *benamee*, or fictitious one, instituted by Tarranath Roy, because another suit brought by Bishesur Bhutacharj against him (defendant) had been dismissed, also instigated by Tarranath Roy. Both these pleas, after taking evidence, the moonsiff rejected, and gave the plaintiff a decree. The appeal rests on the same grounds; but I do not find that the appellant either summoned Tarranath Roy or Bishesur Bhutacharj, and there is no other proof to support the appellant's plea, or any to warrant a suspicion that the suit is fictitious or *benamee*. Seeing therefore no reason for disturbing the moonsiff's decision, I affirm the same, and dismiss the appeal.

THE 11TH JULY 1848.

No. 40 of 1847.

Appeal from the decision of Moonshee Ahmud Ullee, Moonsiff of Dhoobulhuttee, dated the 22d February 1847.

Sumbhoo Nath Sandeal, (Plaintiff,) Appellant,

versus

Amardee Paramanik, Jubanee Paramanik, Mundeer Nussou, Abeer Paramanik, and Aleem Paramanik, (Defendants,) Respondents.

THE appellant sued respondents to recover rupees 41, 9 annas, 7 pies, being principal and interest of a bond, bearing date the 25th Mang 1247 B. S., for 25 rupees. The defendants pleaded an *alibi*; and one of them, it was alleged, was only 12 or 13 years of age when the bond bears date. All denied borrowing the money, or giving any bond. The moonsiff, not crediting the witnesses to the bond, with advertence to discrepancies in their testimony, which were very palpable, dismissed the claim. The plaintiff, being dissatisfied, has instituted this appeal, and, in his

grounds of appeal, has attempted to reconcile the discrepancies noticed by the moonsiff; but the fact of one of the defendants being a minor is not denied, and, on examining the bond, it is quite clear that neither the defendants or witnesses, or any of them, signed their names thereto, or could write. For these reasons I affirm the moonsiff's decision, and dismiss the appeal.

THE 11TH JULY 1848.

No. 41 of 1847.

Appeal from the decision of Moonshee Ahmud Ullee, Moonsiff of Dhoobulkuttee, dated the 22d February 1847.

Sumbhoo Nath Sandeal, (Plaintiff) Appellant,

versus

Hosain Mundul, Rowson Mundul, Serajdee Moollah, and Hurruf Nussou, (Defendants,) Respondents.

THIS is a similar suit to No. 40, decided this day. The same amount, it is alleged, was lent, but on a later date, (the 23d Sawun 1249 B. S.,) by the same plaintiff. The moonsiff dismissed the claim, not crediting the witnesses, and suspecting the bond. And concurring with him in the reasons given for his decision, I also dismiss this appeal.

THE 11TH JULY 1848.

No. 54 of 1847.

Appeal from the decision of Moonshee Ahmud Ullee, Moonsiff of Dhoobulkuttee, dated the 5th March 1847.

Sakeer Moollah, after his death, Soobun Moollah, Sahabaz Moollah, and Suddoo Moollah, (Defendants,) Appellants,

versus

Muttee Mundul, (Plaintiff,) Respondent.

THE respondent sued to recover rupees 111, 13 annas, being principal and interest of a bond, bearing date the 25th Bhadoon 1252 B. S., for rupees 100, lent to the appellants' father, deceased, and the moonsiff gave the respondent a decree. Against this decision the appellants' father appealed, but died before the appeal came on. After reading the depositions, I see no reason for disturbing the moonsiff's decision, which is therefore affirmed, and the appeal dismissed.

THE 18TH JULY 1848.

No. 162 of 1847.

Appeal from the decision of Sreenath Biddyabagish, Moonsiff of Bograh, dated the 21st September 1847.

Kazi Ameeruddeen, Kazi of Purgunnah Selburus, &c.,
(Plaintiff,) Appellant,

versus

A. Sukra Khan, B. Amatea, and C. Nepoo Paramanik, (Defendants,) Respondents.

CLAIM, to recover rupees 2, on account of fees for the performance of a marriage.

The appellant sued to recover the above sum for a marriage performed by C. of A.'s daughter to B., C. not being his (appellant's) moollah, or having any authority to act on his behalf. The sum, or fee, (two rupees) was, it is alleged, fixed as the marriage fee by a former judge of this court, and on this the claim rested; but the moonsiff, with reference to the decision of the Sudder Court, passed on the 26th January 1842, in the case of Syud Mahomed Azcem Kazi *versus* Sheik Mahomudee and others, dismissed the suit.

Against this decision the appellant appeals, urging he has a right to sue under Construction No. 1042; and that the Sudder's decision cited by the respondent, and adopted by the moonsiff, is irrelevant and not in point. There can be no doubt the judges (Messrs. Lee Warner and A. Dick) who passed the decision held no suit could lie for kazi's fees, with reference to Section 8, Regulation XXXIX. of 1793; and this decision having been passed in a special appeal, it necessarily supersedes the Court's Construction No. 1042, of a prior date (19th July 1836.) But in this case the plaintiff has mixed up his claim with the wrong done him by some of the defendants calling in another defendant to perform the marriage ceremony, and who had no right to perform it. In Morley's Digest, vol. I, page 194, it is laid down "that a civil suit for damages is the only means by which a kazi can exclude others from performing the duties of his office."* This clearly points out what is the present plaintiff's remedy in this case; and since he has not adopted it, all that remains is, in reversal of the moonsiff's decision, to nonsuit the plaintiff, or appellant, making the costs of the parties payable by themselves in this court.

* "Under Regulation III of 1808" is added, but what presidency is not mentioned. It certainly is not Bengal.

THE 18TH JULY 1848.

No. 164 of 1847.

Appeal from the decision of Sreenath Biddyabagish, Moonsiff of Bograh, dated the 21st September 1847.

Same Plaintiff, Appellant,

versus

A, Becna Nusssoo, B, Adoo Nusssoo, C, Kadir Nusssoo, D, Badla Paramanik, and E, Nyamut Moollah, (Defendants,) Respondents.

IN this case the same appellant sued to recover one rupee and four annas for a marriage (*nikah*) performed without his authority by the defendant E, and again the moonsiff dismissed the suit. For the reasons given in cause No. 162, decided this day, the moonsiff's order is reversed, and the plaintiff, or appellant, nonsuited, and costs in this court made chargeable to the parties.

THE 19TH JULY 1848.

No. 165 of 1847.

Appeal from the decision of Sreenath Biddyabagish, Moonsiff of Bograh, dated the 21st September 1847.

Same Plaintiff, Appellant,

versus

Nowcouree Pykar and thirty-five others, (Defendants,) Respondents.

CLAIM, to recover rupees 11, 4 annas, for kazecs' fees, called *challa*, at the rate of one *cowree per diem*, or one *anna per annum*, per domicile, for five years, *i. e.* from 1249 to 1253 B. S. The moonsiff dismissed the suit, and the appellant's vakeel now states his client withdraws his appeal. The case is therefore struck off, and appellant will pay all the respondents' costs.

THE 19TH JULY 1848.

No. 174 of 1847.

Appeal from the decision of Sreenath Biddyabagish, Moonsiff of Bograh, dated 29th November 1847.

Same Plaintiff, Appellant,

versus

Amoo Paramanick, (Defendant,) Respondent.

CLAIM, to recover rupees 5, on account of a new *musjeed*, or mosque, erected by the respondent, which was opened without

the intervention of the appellant, the kazee of the purgunnah. The appellant sued to recover the above sum, and the moonsiff dismissed the claim. It is pleaded in appeal that this sum (5 rupees) was fixed as a fee for such occasions by the judge of this district; and after the institution of the suit, it is asserted, the respondent offered to pay three rupees, and to give a *lottah* full of rice; but, on appellant declining, he agreed to give five rupees, but did not pay this sum at the instigation of a person by name Abdool Rub. Here, at any rate, there was a voluntary offer, which the appellant refused; and as neither in the moonsiff's court, or in this, has he produced any proof or document to shew that the fee could be demanded, all that remains 'is to affirm the moonsiff's decision, and dismiss the appeal with costs.

THE 24TH JULY 1848.

No. 119 of 1847.

Appeal from the decision of Moulvee Mahomed Ullee, Moonsiff of Nattore, dated the 20th July 1847.

Kumlakant Dhur, (Plaintiff,) Appellant,

versus

Nubee Paramanik, Haroo Paramanik, Andec Paramanik, Shamee Bewah, widow, and Sooma Bewah and Omrit Bewah, daughters of Mullik Bhistec, deceased, (Defendants,) Respondents.

CLAIM, to recover 105 rupees, 3 annas, on account of the hire of a boat.

The appellant sued to recover the above sum, due on account of the hire of *jonge* boat, from the 16th Poos 1248 to the 12th Sawun 1253 B. S., less nine rupees paid. The appellant had sued before, but was nonsuited, as he had not made the heirs of one of the parties to the agreement a defendant. The appellant having sued again, the moonsiff now dismissed the suit, not crediting the evidence of the witnesses to the agreement, on account of discrepancies noticed. I have read these depositions: three persons, and one, the writer, depose to the agreement having been signed for the respondents and Mullik deceased, by the person who wrote it. The boat the defendants denied having ever taken, or given the agreement. Supposing the latter doubtful, a local investigation would clear up who had the boat during that time. A *jonge* boat is not easily moved: some persons must have been employed, by either the appellant, or party who had the use of the boat. The appellant's vakeel cannot state where it is now; but when appellant sued, the respondents had got the boat. Case therefore

sent back, for the moonsiff either to take further proof as to who had the boat during the period above stated and when the suit was instituted, or to depute the local ameen, or his own nazir, to enquire and report, and then decide. The value of the stamp on which the petition of appeal is written, to be returned to the appellant, and the usual order as regards costs.

THE 24TH JULY 1848.

No. 122 of 1847.

Appeal from the decision of Mr. A. DeLemos, Moonsiff of Shahzad-pore, dated the 29th July 1847.

Kishen Doolal Sein, (Defendant,) Appellant,

versus

Bhoodhur Biddarutun, (Plaintiff,) Respondent.

THE respondent instituted this suit to have set aside a summary award passed on the 31st March 1845, by the joint magistrate of Bograh, under Act IV. of 1840, affirmed in appeal by the session judge of Rungpore, on the 26th July following. giving the appellant possession of $17\frac{1}{2}$ gundas share of a talook called Phool-koocha. This, respondent asserted, formed part of his purchase of a one anna fifteen gunda share of the said talook, sold for arrears of Government revenue, and purchased by him, in his own name, and for his own use. The appellant admitted the purchase as stated, but pleaded that he had paid to the respondent, to obtain half the said purchase, rupees 172, 8 annas, being half the price and half the incidental expenses, when the respondent gave him an agreement that he would convey the same to him by deed of sale, and have his name registered as half proprietor. The suit, as well as right to possession, rests on this agreement; but the moonsiff suspected its being genuine, as a copy filed by the respondent had the names of five attesting witnesses affixed to it, while the original had ten. And adverting to the provisions of Section 22, Act XII. of 1841, and Section 21, Act I. of 1845, and the decision of the Sudder Court in the case of Radhapershad Rae *versus* Goureespershad Rae, (S. D. A. Decisions for 1846, page 104,) he held the agreement illegal, and, reversing the joint magistrate's order, decreed possession of the $17\frac{1}{2}$ gundas of the talook to the respondent, with meane profits.

Against this decision appellant appeals, pleading, *inter alia*, that neither of the Sections of the Acts alluded to by the moonsiff, or the case cited by him, applied to the present case.

It would appear that the talook was sold at the office of the collector of Mymensing, on the 16th Aug 1248 B. S., and the agree-

ment produced by the appellant is dated the 22d of that month. Thus the agreement, if *then* signed, sealed, and delivered, was so six days after the sale. Two witnesses, Sadoo and Meeroo, have been examined by the moonsiff to its execution. In it the condition is, after stating that the respondent had received from the appellant half the purchase money at the time of the purchase, that the respondent would give appellant a deed of sale for the half share, and have his name registered as proprietor. As the auction sale took place antecedent to the enactment of Act I. of 1845, (passed 11th January 1845, corresponding with the 29th Poos 1251 B. S.,) the sale must have been held under Act XII. of 1841, and Section 22 enacts, "that any suit brought to oust the certified purchaser (as aforesaid) on the ground that the purchase was made on behalf of another person, not the certified purchaser, though by *agreement* the name of the certified purchaser was used, shall be dismissed with costs." The agreement here spoken of, or referred to, evidently appears to have reference to an agreement made at the time, or *before* the sale, and cannot mean or apply to an agreement made *after* the sale, or after the lot had been knocked down to the certified purchaser. In Radhapershad's case the claimant was one of the former proprietors and defaulters, who, by Clause 1, Section 15, Regulation XI. 1822, were prohibited from making a purchase at the sale; and on this ground the judge, who decided the case, seemed to view it as an attempt to evade the law, and consequently ruled the claim untenable. Now the appellant in this case, under Act XII. of 1841, was not prohibited from purchasing from the purchaser, or the respondent interdicted and restrained from selling to him half his purchase. In a case *semble*, and on a similar agreement, I find I gave a decree to the holder of the agreement in appeal on the 16th January 1844 (Prankishen Mookopadhya *versus* Rajnarain Choudhree and others,) and the appellant's vakeel states that a petition for a special appeal against the decision was rejected by the Sudder Court. Therefore under the precedent of that case, and with reference to the note at page 292, Sudder Dewanny Adawlut Reports, Vol. VI., that "on proof of a conveyance subsequently executed by such agent to the real purchaser, the Court will cause performance without enquiring too minutely into the grounds of the transaction," I think the moonsiff's decision must be reversed, and the case sent back to him to take further proof to the execution of the agreement. The two witnesses examined already in his court, are named in *both* the original agreement and copy; and whether the omission of five names in the latter, was for some sinister purpose, or accidental, will be cleared up by the examination of the other eight witnesses named in the original agreement, and the validity of the deed decided on

its merits, the question of its legality being disposed of. The case is therefore remanded to the moonsiff to proceed as above indicated. The appellant will file a copy of the decree of this court in the case of Ram Kishen Mookopadhya, appellant*, to be put up with the *nulhee*, or record; and the value of the stamp on which the petition of appeal is written, will be returned to the appellant, and the usual order as regards the costs in this appeal.

* The following is the decision in English passed in the above-mentioned appeal on the 16th January 1844.

“No. 7 of 1843.

*Appeal from the decision of Moulsee Abdool Allee, Principal
Sudder Ameen, dated the 31st January 1843.*

Pran Kishen Mookopadhya, Appellant,

versus

Rajnarain Choudhree and others, Respondents.

IN this suit the appellant was plaintiff, and sued to recover possession of an estate sold to him by the respondent, Rajnarain, under a written contract. Rajnarain purchased the estate at an auction sale for arrears of revenue, and, not being able to pay up the purchase money, agreed to sell it to the appellant, if he paid the price with a profit, giving him a written deed to this effect that in the event of the sale being confirmed by the revenue authorities his name was to be registered as proprietor, and the deed, or agreement, to stand as a deed of sale; and which contract of sale was duly registered in the office of the register of deeds. The sale took place in the Bengal month of Assar 1246, in the month of Maug the sale was confirmed, and in the following month Rajnarain (in the absence of the appellant) sold the estate to the respondent, Abbott, and who subsequently sold it to Afsul Mundul and others, also respondents. The principal sudder ameen dismissed the claim. I am of opinion that the appellant was guilty of no *laches*. He gave an adequate price, and there was nothing illegal in the contract though the seller was not in possession. The sale depended on the confirmation of the sale by the revenue authorities, and, having been confirmed, *under the contract* the sale became *absolute*, and the interests and rights of the purchaser, Rajnarain, were transferred to the appellant. Whether Abbott was aware of the contract between Rajnarain and the appellant, is not clear, nor is it material. Rajnarain, when he had contracted to sell the estate to the appellant, under conditions that he (appellant) had fulfilled, could not sell it to any one else, and in selling it to another was guilty of fraud, taking the price from two parties.”

THE 24TH JULY 1848.

No. 123 of 1847.

*Appeal from the decision of Sreenath Biddyabagish, Moonsiff of
Bograh, dated the 29th July 1847.*

Lootea, Nceepoocha, Gource, Lall, and Nucowreca Paramaniks,
(Defendants,) Appellants,

versus

Urr and Necmye Paramaniks, (Plaintiffs,) Respondents.

CLAIM for rupees 64, damages on account of injury to caste.

The respondents instituted this suit, having been turned out of an assembly, on the occasion of a *shrad*, to which they had been invited, each laying his damages on account of the indignity they suffered at rupees 32. It was alleged by the plaintiffs that they had gone and been received one day, and the next had been ejected, because they dealt in cow-hides. Defendants denied having ejected them, pleading they had of their own accord left the assembly in anger, saying they would join another *mujlis*, or community. The moonsiff decided they had been forcibly ejected, adding if they dealt in hides why were they not turned out the first day? He therefore considered them entitled to damages, and assessed them at 5 rupees against the appellants with costs in proportion. Against this decision they appeal, pleading that it was passed without any evidence being taken in support of the plaint, or to their defence. This I find to be the case, and as the appellants made no admissions to the truth of the plaint, I cannot conceive on what the decree rests, or on what proof the damages were assessed. The moonsiff's decision is therefore reversed, and the case remanded to him, to decide on its merits, and agreeably to the rules for the trial of suits depending before moonsiffs, as laid down in Section 28, Regulation XXIII. of 1814. The value of the stamp on which the petition of appeal is written, to be returned to the appellants, and the usual order as regards costs.

I therefore decree the appeal, and the contract, or conditional sale, is made absolute, and the appellant's name is to be registered as proprietor of the *mehal* sold by the collector, and the mesne profits, from the date of the suit being instituted, to the date of possession being given to the appellant, are to be paid by Rajnarain to the appellant, with all costs of suit, both in the principal sudder ameen's court and in this appeal. Rajnarain to pay his own costs, and Abbott and Afsul Mundul and others to pay their own costs.

THE 31ST JULY 1848.

No. 127 of 1847.

Appeal from the decision of Moulvee Mahomed Ullee, Moonsiff of Nattore, dated 25th August 1847.

Gorachand Ghose, Bhyrub Ghose, and Kasheenath Ghose,
(Defendants,) Appellants,

versus

Ramsoonder Ghose and Kishen Soonder Ghose, (Plaintiffs,) Respondents.

THIS suit was instituted by the respondents to recover certain *paramanikee* fees and damages withheld by the appellant at the marriage of Kasheenath Ghose's daughter in the month of Phagoon 1253 B. S., the damages being laid at rupees 60. The defendant, in answer to the plaint, pleaded that Ramsoonder was not a paramanik, only a mundul, and more, he resided at Darekooshee, and not at Hurryal; that Kishen Soonder, the son of Jeebun Ghose, was a paramanik, but he was not theirs; that they were under Gorachand (one of the appellants,) and had nothing to do with Kishen Soonder.

The moonsiff, after recording that it was proved that the plaintiffs were paramaniks, continues: "it is not necessary to investigate what title Gorachand has to be a paramanik, and therefore, as in another case at the suit of three plaintiffs, the principal sudder ameen had decreed sixty rupees as damages, he in the present suit adjudged the two plaintiffs entitled to forty rupees to be paid by the defendants." Against this decision appellants appeal—Gorachand again pleading that he was a paramanik, that his witnesses had proved this, that among them there were no documents or deeds to shew who were the paramaniks but all the caste were well aware who were their paramaniks. That Kasheenath and Bhyrub, the other appellants, were his jone, or subservient to him. How therefore could the moonsiff state it was unnecessary to investigate into his claim to be a paramanik? That he was not a party to the suit decided in appeal by the principal sudder ameen; and others, who were paramaniks, if they were aware that Ramsoonder set up a claim to be a paramanik, when he was only a mundul, would protest. He therefore prayed that his title to be a paramanik should be enquired into, and, if established, upheld. The other appellants subscribed to this woojoohat.

The case appears to have been very superficially investigated. If Gorachand was the paramanik of the Hurryal village, which Kasheenath and Bhyrub Ghose admit, and that they were his jone, or under him, that would be a complete answer to the plaint; and in the answer it is asserted, and it is very probable from the caste of Ghose being very numerous, that there are separate

paramaniks for separate divisions of the country, the one having no right to interfere with the other's fees and privileges connected with marriages, &c.; and they only sat in full conclave to decide on matters relating to caste, that is, the admission into or rejecting of any person from the caste. It is therefore quite clear the issue tried by the moonsiff was not that required by the answer filed. From being a Mahomedan he may not have fully understood the bearings of the suit. And as it does not appear to have been sufficiently investigated, I reverse his decision, and remand the case to the moonsiff of Bhowannygunge (a Hindoo,) to decide on its merits, after summoning what witnesses he may think necessary, and whether before examined or not. The value of the stamp on which the petition of appeal is written, to be returned to the appellants, and the usual order as regards costs.

THE 31ST JULY 1848.

No. 130 of 1847.

Appeal from the decision of Moonshee Ahmud Ullee, Moonsiff of Dhoobulhuttee, dated the 17th August 1847.

Suroopchunder Shah, (Plaintiff,) Appellant,

versus

Ulee Mahomed, (Defendant,) Respondent.

THE appellant instituted this suit to recover 25 rupees, with interest, under an *ikrar*, or agreement, dated the 25th Phagoon 1246 B. S., in which, as security for the payment, the respondent pledged a tank with the trees growing on the banks of it. The moonsiff, after noticing that in the plaint the plaintiff mentioned two places of residence, dismissed the suit as no notice of foreclosure had been issued on the defendant under Regulation XVII. of 1806. Being dissatisfied with this decision, the plaintiff appeals, and, after mentioning that the second place of residence was a new one, occupied since the date of the *ikrar*, urges that the tank and trees were only *pledged*, and not *mortgaged* to him, therefore he could not have issued a notice for a foreclosure. On referring to the *ikrar*, I find that it is specified that the borrower pledges (*bunduck rakea*) the tank and trees, and stipulates that he will not sell them, or take the fish from the tank, till the loan is liquidated. This cannot be called a mortgage, or *kut*, and a money action will lie in my opinion. The exception taken to the suit as laid by the moonsiff is not pleaded by the defendant in his answer; he merely denies borrowing the money, or giving the *ikrar*, or pledging the tank, &c.; and that he did not reside at Sultanpore. The moonsiff's decision, therefore, being passed on a wrong assumption, must be reversed, and the case remanded to him to be investigated on

its merits. The value of the stamp on which the petition of appeal is written, to be returned to the appellant, and the usual order as regards costs.

THE 31ST JULY 1848.

No. 136 of 1847.

Appeal from the decision of Moonshee Ahmud Ullee, Moonsiff of Dhobulhuttee, dated the 30th August 1847.

Sreedhur Shah, (Plaintiff,) Appellant,

versus

Seerbaz Fuqeer, (Defendant,) Respondent.

THIS was a suit instituted to recover 60 rupees, 4 annas, being principal and interest of a bond, dated the 3d Assin 1252 B. S., and the moonsiff, not crediting the evidence, dismissed the suit; he also recorded that neither the alleged borrower, or attesting witnesses, had signed their names to the bond, and, though summoned, the writer of it had not been brought forward by the plaintiff. Against this decision the plaintiff appeals, urging that he could not produce the writer of the bond, as he was not in his service. After reading the evidence *pro* and *con*, I see no reason for disturbing the moonsiff's decision, which is therefore affirmed, and the appeal dismissed.

ZILLAH RUNGPORE.

PRESENT: T. WYATT, ESQ., JUDGE.

THE 12TH JULY 1848.

Case No. 14 of 1847.

*Appcal from the decision of the Acting Principal Sudder Ameen,
(Mr. Thomas,) of the 22d November 1847.*

Rance Kisto Rummony and Kowur Shamkishore Roy, (Defendants,) Appellants,

versus

Prosunno Comar Tagore, (Plaintiff,) Respondent.

THIS suit was instituted by the respondent for the possession, with wasilat, of six (6) beegahs of land, stated to be situated in the village of Moheepore, pergunnah Bahmunkundah, &c., purchased at auction by the respondent, which were tenanted by Brijmohun Khansama in the fictitious name of Nemaichand before and at the time of respondent's purchase, and, after the death of Brijmohun, the lands having become waste, Luckeekunt Chakee, in collusion with the appellants, the former zumeendars of the respondent's estate, took possession of the lands in Bhadoon 1249 B. S., on the ground that they formed a portion of the rent-free lands (dewutter) of the appellants situated in mouzah Ambaree Tamileepara, pergunnah Baireeperee.

The lower court referred the question as to whether the lands were khiraj, or lakhiraj, in the first instance, to the collector, for enquiry, on whose decision in favor of their being khiraj, the case is decreed for the plaintiff.

On examining the papers, finding that the collector's proceedings were defective, inasmuch as from the nazir's return to the notice stated to have been served on the defendants, it would not appear that any notice had been served upon one of them, viz. Rance Kisto Rummony, as being a purda-nushcen, she could neither have been pointed out by the plaintiff's man, nor could the serving peada of the collectorate have heard her say, as stated, that she would give no kyfaut to the notice. The acting principal sudder ameen also, before determining the suit, should have called for the defendants' proofs, especially for the moonsiff's decree of the 30th December 1843, referred to by the parties, shown now to the court,

which appears to have determined the lands in dispute as appertaining to the village of Ambaree Tamileepara, in pergunna Baireeperee, the estate of the appellants, though it (decree) did not forbid the plaintiff suing the defendants for these lands as khiraj, as situated in his village of Moheepore, the reverse of his decision that they belonged to Ambaree Tamileepara.

The appeal is, therefore, decreed, and the order of the acting principal sudder ameen reversed, to whom the case will be remanded for trial with reference to the remarks above stated. The stamp of appeal will be returned as usual.

THE 15TH JULY, 1848.

Appeal from the decision of the Principal Sudder Ameen of 22d February 1848.

No. 1 of 1848.

Mohun Chunder Shaha, auction purchaser, (Defendant,) Appellant,
versus

Sukeena Beebee, (Respondent,) Plaintiff.

No 2 of 1848.

Baboo Pertab Singh and Ramjeebun Shaha, (Defendants,) Appellants,
versus

Sukeena Bebee, Respondent, (Plaintiff.)

THIS suit now instituted by the respondent for the annulment of two sales effected by the collector of lot Kistopore and mouza Mundulabaree, the former on the 18th September 1834, and the latter on the 5th March 1835, in execution of decrees passed against Mehruddeen Chowdry (son of the plaintiff,) on the pleas—first, that when these decrees were applied for to be executed, plaintiff urged her claim hereditarily to succeed to a portion of these mehals, and prayed that the right and interest of Mehruddeen might alone be disposed of by public sale, to which no attention was paid, and the whole mehals were sold; and secondly, because the sales had been illegally held.

Plaintiff founded her claim to hereditary succession on the following grounds:

Her husband, Tattee Chowdry, had two wives, and on his death his property was divided by a solahnameh, dated 22d Poos 1225, among the children of each marriage, when plaintiff's sons Mehruddeen and Koteebuddeen Chowdry got as their share lot Kistopore, with a sudder jumma of rupees 599-7-1, and mouza Mundulabaree, with a sudder jumma of rupees 162-1-11.

On the death of Koteebuddeen, his share was divisible between Mehruddeen, the plaintiff, and her two daughters, Meerun and Tyrun, as follows: Mehruddeen to have ten, plaintiff four, and each of

the daughters five of twenty-four shares. On the death of Meerun, her share became divisible among three heirs into eighteen shares, of which plaintiff was entitled to three, Mehruddeen ten, and Tyrun five. On the death of Tyrun, her share devolved on two heirs in three portions, of which plaintiff was to receive one, and Mehruddeen two, whence according to the above distribution, plaintiff was entitled to four annas twelve gundas, three cowries, one krant, and eight and a half teel, and Mehruddeen to eleven annas, seven gundas, two krants, and eleven and a half teel of the property of Koteebuddeen in the two mohals before mentioned.

The lower court, finding in a petition of Zumeeruddeen Chowdry (one of the sons of the other wife of Tattee Chowdry) of the 13th Jeit 1219, presented to the zillah court, and by a decision of the zillah court of the 4th September 1826, that these two villages were the proprietary right of Mehruddeen and Koteebuddeen; and that they and the heirs of Koteebuddeen had been all along in possession, and the opinion called for, of the Mahomedan law officer, confirming the distribution claimed by the plaintiff, annulled both sales, and decreed with costs the portion sued for in favor of the plaintiff, with wasilat from the date of sale, not considering it necessary to enquire into the validity or otherwise of the sales.

The chief objection on appeal of the appellants was that the suit had been instituted on the 25th January 1846, when the plaintiff had not included one of the defendants, viz. the decreedat, Akbur Allee, in execution of whose decree Mundulabaree was sold on the 5th March 1835, but she included him in a supplementary petition on the 5th June 1847, whence, more than twelve years had elapsed since the above sale took place, and the suit was barred.

Concurring in the reasons given by the lower court for its decree in favor of the plaintiff, and finding that the original plaint had been filed within the period of twelve years, I reject both appeals, upholding the decision of the lower court.

THE 20TH JULY 1848.

No. 1 of 1847.

Appeal from the decision of the Sudder Ameen of the 3d December 1846.

Denonath Chackee and Muddunchunder Doss, (two of the Defendants,) Appellants,

versus

Birhurree Doss, Munhurree Doss, and Ramhurree Doss, (Plaintiffs,) Respondents.

THIS action was brought by the respondents for the possession of ten annas, thirteen gundas, one cowree, and one krant of a jote,

bearing a jumma of rupees 13-9-14, which they had purchased by kowala, dated 3d Bysakh 1246, from Duderam and Khugessur, and from which they had been dispossessed by the appellants and other defendants, consequent on their having obtained a decree against them (plaintiffs) for four of five annas, six gundas, two cowrees, and two krants, the share, in the jote, of Juggurnath, and it was in execution of this decree that they usurped the right of the plaintiffs to the extent sued for. The defendants denied the plaint, alleging that the lands sought for were waste; and that it was only the object of the plaintiffs to get possession of their cultivated lands.

The sudder ameen, considering the dispossession clearly proved against the appellants as defendants, decreed restoration in favor of the plaintiffs, rendering the costs payable by the appellants, and exempting the rest of the defendants from liability.

Approving of this decision, I reject the appeal.

ZILLAH SARUN.

PRESENT: H. V. HATHORN, Esq., JUDGE.

THE 18TH JULY 1848.

No. 164 of 1847.

A Regular Appeal from a decision passed by Moulvee Wuheed-ooddeen, Moonsiff of Sewan, dated 4th August 1847.

Beirooram, (Plaintiff,) Appellant,

versus

Musst. Jussia, widow of Chintamun Kulwar, (Defendant*),
Respondent.

	Co.'s	Rs.	As.	P.
CLAIM, principal,	96	0	0	
Interest,	50	0	5	

Company's rupees 146 0 5

as per account.

“ The 27th June 1848.

“ Plaintiff instituted this suit on the 27th February 1847, stating that Chintamun kept a grocer's shop in mouzali Shumshooddeenpoor, and had a running account with Baboos Busdeonarain and Kishendeonarain, and was in the habit of taking cash for current expenses from plaintiff; that on the 12th Kartick 1250 Fussily, an adjustment took place, exhibiting a balance of 100 rupees in plaintiff's favor, in payment of which the said Chintamun gave an order on the aforesaid baboos, his debtors, which they dishonored: hence this suit against the widow for the balance due after payment of 4 rupees liquidated.

Defendant denied the debt, observing that her husband had died three days after the alleged date of adjustment, and that the payment of 4 rupees in liquidation was false.

The moonsiff distrusted the evidences of Moorfeedhur, Sungumlal, and Mohur, in support of the adjustment and the order for payment on the baboos, observing that the account was not signed, or attested, and it was improbable that defendants had ventured to give an order for payment on the baboos; and the alleged payment of 4 rupees is stated by the witnesses to have taken place after the death of Chintamun.

The plaintiff appeals to this court in dissatisfaction, urging that the debt was incurred by Chintamun, and an order for payment given as proved by the witnesses cited.

Upon referring to the evidence of the witnesses, I find that they clearly support the plaintiff's claim as to the adjustment having taken place in their presence, and the issue of the order of payment; and I can see no sufficient reason for distrusting their evidence. Plaintiff has inadvertently paid the penalty and got a stamp affixed to the *order* for payment on the baboos, instead of on the *adjustment account*; probably in consequence of the former bearing the signature of Chintamun, which plaintiff did not require on the *account*, after obtaining an order for payment. The cause of action is, however, the same, upon whichever document the amount is claimed; and the stamp penalty has been paid *once*. I do not therefore think it necessary that the adjustment account should also be required to be stamped. The order for payment was duly signed by Chintamun, and given to plaintiff in the presence of the witnesses cited; and I think, in refutation of the moonsiff's deduction, that it is more probable that Chintamun should give plaintiff an order for payment of a *bond-fide* debt on the baboos, who were indebted to him, than he should venture to give an order on wealthy zemindars in favor of a person to whom he was under no obligation whatever; nor do I think that, in the absence of all enmity, plaintiff would needlessly pay the penalty required for affixing the requisite stamp, if the debt was not a *bond-fide* transaction. For these reasons I admit this appeal, and direct that respondent be served with a notice."

Respondent attended the court in person this day, and denied the validity of the claim, observing that, although her husband was able to write, the adjustment account was signed by Moorleedhur, and Mohur had said that it was attested by witnesses, which was not the case, and there was no proof of previous trading.

Seeing no sufficient reason to doubt the validity of this claim, which is duly authenticated on solemn affirmation,

ORDERED,

That this appeal be decreed, with costs, in favor of plaintiff, and the decision of the moonsiff of Sewan be annulled.

THE 20TH JULY 1848.

No. 9 of 1846.

Regular Appeal from a decision passed by Moulvee Mahomed Rafiq, ex-officio Sudder Ameen of Sarun, dated 17th February 1846.

1, Smtlal, adopted son of Gunesheelal, deceased) and 2, Mohenlal, father and heir of Gopaladas, (deceased,) (Plaintiffs,) Appellants,
versus

Musst. Khudejah Begum *alias* Musst. Hoseinee Begum,
(Defendant,) Respondent.

CLAIM, Company's rupces 578, 6 annas, 3 pie, balance of principal and interest of a bond for Company's rupees 613, dated 27th September 1843, or 19th Asin 1251 Fussily.

This suit was instituted by Baboos Gunesheelal and Mohenlal, bankers of Chupra, on the 12th April 1843, setting forth that defendant's agent, Khajeh Mahomed Khan, had borrowed Company's rupees 613 from their firm on his client's account, in order to liquidate arrears of revenue due to Government on account of mehal Nurhun, of which she was one of the proprietors, and the agent had executed a bond for the amount so taken, and sealed it with his client's seal; that rupees 144, 4 annas, 3 pie, principal and interest, had been paid, and the balance, as above stated, was due.

The defendant, Musst. Khudejah Begum, denied having either executed the bond, or received the amount, or authorized her agent to incur the debt, representing herself to be a veiled woman residing in Patna, and totally ignorant of the transaction, observing that plaintiffs were in league with her agents, Jumuklal and Khajeh Mahomed Khan, against whom (the latter) she had pecuniary claims.

The sudder ameen decided that the execution of the bond and receipt of the money by Khajeh Mahomed Khan was proved by the subscribing witnesses; and although he had affixed his client's seal to the bond, there was no proof that the agent had been duly authorized so to do,—passing a decree with costs against the defendant, Khajeh Mahomed Khan, and absolving the principal.

Plaintiff appeals, urging that Musst. Khudejah Begum should have been made responsible, as the agent was a man of straw, and a decree against him was useless.

This appeal was admitted on the 12th February last, in order to give the appellant an opportunity of proving that the money had been borrowed by the agent on his client's account and with her authority, and Musst Khudejah was also invited to disprove having given any such authority to her agent.

JUDGMENT.

I am of opinion that this debt was duly incurred by the agent on behalf of Musst. Khadejah Begum, his client: first, I find that the bond bears the impression of her seal, which corresponds with the impression on her power of attorney, filed in this court and in the court of first instance; from this fact it must be deduced either that she herself affixed the seal upon the bond, or that the seal had been made over to the agent with full powers to use it on her behalf; secondly, the subscribing witness to the bond, amongst whom was another of her agents (Jumuklal,) affirm that the money was borrowed to liquidate arrears of revenue due by plaintiff to Government; and thirdly, I find by an extract from the seeah or entry at the collectorate (a copy of which is produced) that the same day on which this money was borrowed, the sum of rupees 1,398, 3 annas, 3 pie, was paid into the collec-

tor's treasury by Jumuklal, the agent of defendant, obtained from the firm of Gunesheelal, the plaintiff.

There can be no doubt therefore that this money was borrowed by the agent on this account on his client's behalf. Again, Musst. Khudejah, in her answer to the plaint, does not deny the fact that Khajeh Mahomed Khan was at the time her general constituted agent. She was moreover invited to disprove his authority to take advances on her account, but she has failed to do so ; and the silence of the agent himself can only be attributed to a desire on his part to assist his client in evading this just debt ; having the power (if a decree be given against him alone) to prove his own insolvency, and thereby save his client, and defeat the ends of justice. If such be not the case, why does he not appear, and produce his power of attorney, and disprove the inference to be drawn from his silence ? For these reasons it is

ORDERED,

That this appeal be decreed, and the decision of the *ex-officio* sudder ameen be reversed, and the principal defendant, Musst. Khudejah Begum, be made alone responsible for this claim, with interest and all costs of suit, and the agent, Khajeh Mahomed Khan, be absolved from liability.

THE 24TH JULY 1848.

No. 6 of 1846.

A Regular Appeal from a decision passed by Mr. Colin McDonald, Moonsiff of Pursa, dated 24th December 1845.

Ruggonath Persad, (Defendant,) Appellant,

versus

Genda Lal, (Plaintiff,) Respondent.

CLAIM, Company's rupees 31-0-9, on account of arrears of rent, for 1247 and 1248 Fussily, viz. rupees 20, 2 annas, principal, and rupees 10, 14 annas, 9 pie, interest and exchange.

This claim was rejected in appeal on the 27th February 1846, and the decision of the moonsiff annulled, upon the ground that the farmer (the plaintiff) had produced no kaboolcut, which was necessary, when the amount of rent was disputed, and because the wasilbakee had not been attested by the putwarree, Nath Sahaye, and because defendant, on the other hand, produced an acquittance for rent obtained from the maliks up to 1249 Fussily.

A special appeal was preferred (No. 253 of 1846,) and admitted as the decree in plaintiff's favor had been inadvertently reversed in appeal without summoning the respondent, and the case was properly directed to be re-placed on its file, and disposed of *de novo* after summoning the respondent.

This has now been done, and the respondent has defended the case through his authorized pleaders, Jugjeet Lal and Kunjbela Singh.

Referring to the merits of the case, I can find no sufficient reason to alter the opinion before expressed in this case.

Plaintiff sues for balance of rent, an account of 1247 and 1248 Fussily, at rupees 13, 10 annas, 3 pie per annum in proportion to his share, (viz. $6\frac{1}{2}$ annas,) which he held in farm from the maliks, from 1247 to 1251 Fussily, inclusive, admitting a payment of 2 rupees.

Defendant admits being in possession of the 10 beegahs of land in Jeetpoorpat Khord, for which rent is claimed, but urges that he has paid a quit-rent to the maliks for the garden land in dispute, and has got an acquittance, which he produces; and that plaintiff's claim arises from enmity, in consequence of a counter claim, which he is about to bring forward against plaintiff. This acquittance, up to 1249 Fussily, has been attested on solemn affirmation. I am therefore of opinion that, in the absence of any separate kubooleut, or duly authenticated wasilbakkee, this claim for rent, on the part of the farmer, cannot be sustained.

ORDERED,

That the moonsiff's decision in favor of plaintiff be reversed, with all costs of suit to be liquidated by respondent.

THE 24TH JULY 1848.

No. 29 of 1846.

A Regular Appeal from a decision passed by Liladhur Tewarry, late Sudder Ameen of Chumparun, dated 27th August 1846.

Kishenpershad, Hurpershad, Benipershad, Luchmipershad, and Kalipershad, (Defendants,) Appellants,

versus

Sheik Reasut Ali and Sheik Reazut Ali, (Plaintiffs,) Respondents.

CLAIM, for possession and partition of 2 annas, 10 pie, 12 krant share in the entire mouzah Kujraha, tupa Haweler, pergunnah Mehsee. Valuation, Company's rupees 597-11-6-15.

Plaintiffs instituted this suit on the 20th September 1844, setting forth that their share of the estate amounted to 2 annas, 10 pie, and 12 krants, and the remainder (viz. 13 annas, 1 pie, 8 krants) belonged to defendants, but had been settled conjointly at Company's rupees 903-12-11 $\frac{1}{2}$; that defendants realized the entire rents from the ryots, and would not allow them, the plaintiffs, to participate; that when they sued the cultivators for rent, they (the ryots) pleaded payment to defendants, and their suits were struck off the file, and at times they withhold the Government revenue, rendering it necessary to pay up the arrears on their

account, and save the estate from sale; for these several reasons it had become necessary to institute this suit in order to effect a partition and division of the share.

Defendants say that plaintiffs are already in possession of their share, purchased from Mahomed Bhekon, which consists of 200 beegahs, reciting the number of beegahs in possession of other shares, and how acquired; and denying any wish on their part to interfere with the lands already in possession of plaintiffs, and objecting to any butwarra as unnecessary and uncalled for.

The sudder ameen observes that in the petition of the maliks, agreeing to the settlement of their estate, which was made in 1843, the shares of the several maliks are recorded separately; but the estate was permanently settled conjointly in one lot, and the plaintiffs' fractional share in the said petition is specified as amounting to 2 annas, 10 pie, 12 krants, therefore plaintiffs are entitled to possession and division of their share as admitted by defendants with costs, and to wasilat for 1250 and 1251 Fussily in such amount as may be reported by the ameen, to be deputed in execution of this decree; and a copy of the decree be sent to the collector to cause a butwarra to be made under the provisions of Regulation XIX. of 1814.

JUDGMENT.

By Regulation XIX. of 1814, if all the proprietors of a joint undivided estate agree to a separation and division according to their respective shares, the law entitles them to a division; but if the right, or amount share of any of the applicants be disputed, the disputed title must first be established in a court of justice. In this case the right to the fractional share claimed by plaintiffs is *not* disputed by any of the defendants in this suit, and apparently all the maliks of the estate have been included amongst the defendants. Plaintiffs are therefore entitled by law to a division of their undisputed share (viz. 2 annas, 10 pie, and 12 krants;) but be it understood that such permission is not to interfere with the rights and interests of any other co-sharers in the estate, who may not have been made parties to this suit. With respect to mesne profits, I am of opinion that no sufficient proof of dispossession has been adduced, therefore plaintiffs are not entitled to any mesne profits; so much of the lower court's decision must be amended.

ORDERED,

That the decree of the lower courts directing a division and partition of plaintiffs' fractional share be confirmed, and the award of mesne profits be annulled, and, with reference to the circumstances of the case, the parties in this suit are to pay their own costs. The decision of the sudder ameen of Chumparun is thus amended.

THE 26TH JULY 1848.

No. 165 of 1847.

A Regular Appeal from a decision passed by Moulvee Wuheed-ooddeen, Moonsiff of Sewan, dated 5th August 1847.

IIurdeal, (Plaintiff,) Appellant,

versus

Anjorelal and Turpesereelal, (Defendants,) Respondents.

Manorut, Kashee and Mohit, defendants by precaution.

CLAIM, to reverse a summary award passed by the collector of Sarun, dated 7th December 1846, upholding the attachment of 1 beegah, 2 cottahs of land in kharf Salimpore, mouzah Luchmun-doomree, pergunnah Nurhun, value Company's rupees 50-9.

The original defendants (respondents in this case) attached certain crops belonging to Manorut and others, for rupees 50, 9 annas, rent due for three quarters of 1252, on account of 9 beegahs, 19 cottahs of land, alleged to have been cultivated by Manorut and others in the above village. The assistant collector, upon a summary suit to contest the right of attachment, granted replevin upon the ground that the claimants had no right to attach in the life time of their father, and for want of proof of ryots' possession in claimants' share. The collector in appeal reversed the assistant's order, and upheld the attachment, on the ground that a razeenamah had been filed in the assistant's court by the cultivators, admitting the claim, which adjustment, however, the cultivators denied.

This suit is instituted by plaintiff in order to reverse the order of attachment, as it includes 1 beegah, 12 cottahs of land claimed by plaintiff, and which on survey was marked off as belonging to him.

The moonsiff of Sewan dismissed the suit upon plaintiff's admission of being a co-sharer with others in 12 beegahs of joint undivided land, and observing that this suit for 1 beegah, 2 cottahs, in the absence of a regular butwarra, or legal separation of such land, could not be entertained.

JUDGMENT.

Plaintiff disclaims, in appeal, having sued to establish his right of possession, desiring merely to have the summary award cancelled as it includes land in his possession. The cause of action therefore being the justice and legality of the summary award or otherwise, that point alone is to be determined. I find that the execution of this razeenamah, or deed of adjustment, alleged to have been filed on the part of the cultivators, is denied, and is not otherwise authenticated satisfactorily; and the attachment for rent has been upheld upon the denial of the cultivators, without

any proof of payment of rent in past years, and in the absence of any written engagement (kubooleut.) The summary jurisdiction of collectors by Section 10, Regulation VIII. of 1831, is restricted to the enforcement of payment of rents paid in past years; but as no accounts of former years nor any kubooleut signed by the ryots has been filed in this case, the summary decision must be considered invalid, (*vide* case No. 359 of 1847, page 236, of Decisions of the Sudder Dewanny Adawlut, for March 1848); for these reasons I reverse the summary award, without recording any opinion as to the rights of the parties claiming rent.

ORDERED,

That this appeal be decreed, and the decision of the moon of Sewan, and the collector's summary award, dated 7th December 1846, be reversed, with costs chargeable to Anjoreial and Turpesceclal, the principal defendants.

THE 29TH JULY 1848.

No. 26 of 1846.

A Regular Appeal from a decision passed by Moulvee Mahomed Rafiq, ex-officio Sudder Amecn of Sarun, dated 18th August 1846.

Rameshur Ram Tewaree, (Defendant,) Appellant,

versus

Sheonundun Rae, (Plaintiff,) Respondent.

CLAIM, principal, Co.'s Rs.....	160	7	5	12
Interest,....	160	7	5	12

Total, Company's rupees,.. 320 14 11 4

on a bond dated 15th Bhadoon 1240 Fussily.

“ The 7th July 1848.

“This suit was instituted on the 28th August 1845, setting forth

Other Defendants.

* Musst. Ramkullee Kooer, }
 „ Berinchce Kooer, } Widows.

Ramsurn,..... }
 Ramechunder,... } Grandsons.
 Ramnarain,... }
 Ramakanth,... }

that the widows named in the margin,* had borrowed from plaintiff Sicca rupees 200, on the abovementioned date, and that Rameshur Dut, their son-in-law and agent, had executed a bond on their behalf, agreeing to pay the amount, with interest, the following Bysaak.

† 15th Bhadoon, 1242 Fussily, rupees... 15
 1st Sawun 1243 Fussily, rupees 35

Total, Rupees... 50

That with exception of rupees 50 as noted in the margin,† nothing had been paid; hence this suit against

the widows and the grandsons (in whose favor the widows had

intermediately transferred all their landed property,) including Rameshur, the agent.

The widows and Rameshur filed separate answers, denying the transaction *in toto*, the former observing that plaintiff was a defaulting ryot of theirs, and had instituted this suit in anticipation of a claim against him for arrears.

The sudder ameen decreed against Rameshur alone, with full costs, absolving the remaining defendants upon the grounds that, by the evidence of the subscribing witness, Rameshur had taken the money, and executed the deed, and there was no proof of his having incurred the debt on behalf of the widows, or that any subsequent demand of payment had been made upon them, and the payment of rupees 182, as stated by the scribe and one of the subscribing witnesses, was opposed to the plaintiff's statement.

Rameshur appeals, urging that the suit is barred by the law of limitations; and the decision is moreover based upon evidence partly accepted and partly rejected; and that he has been held responsible for a bond executed in the name of other parties.

(A separate appeal is filed by the widows, objecting to their costs being made payable by Rameshur, instead of by respondent whose claim against them had been rejected.)

JUDGMENT.

From the date of the bond to the date of instituting this suit more than 12 years have elapsed, but from the date specified for payment, viz. 28th Bysaak 1241 Fussily, to date of instituting this suit, viz. 11th Bhadoon 1252 Fussily, or 28th August 1845, 11 years, 3 months, and 6 days only have elapsed; therefore, under Construction No. 196, the suit is cognizable. But the evidence adduced by plaintiff is not, in my opinion, trustworthy. The principal defendants, and their agent deny the bond *in toto*, and the three witnesses cited to its execution, (viz. the scribe and two others,) also testify to intermediate liquidation on various dates. This is remarkable, and further, although the cause of action arose 11 years ago, they depose with wonderful accuracy to all particulars of time, place, amount, &c. specifying the particular month and year, and names of parties present, and one witness even recollects the number of *Siccas* and number of *Furruckabad* rupees subsequently paid in part liquidation. That three casual disinterested witnesses as they are represented to be, should bear such details in their memory for such a length of time, and should have been present upon each occasion is almost incredible; but independent of this, I observe a serious discrepancy in the evidence. The scribe avers that Company's rupees 182 of the debt has been paid, whereas plaintiff admits to have received only Company's rupees 50. I cannot accept this evidence as trustworthy, and therefore order that this appeal be admitted, and notice be served on respondent."

Read the objections taken by respondent to the admission of this appeal, but, for the reasons above assigned, I place no credit on the evidence adduced by plaintiff in support of this bond. Ordered, that this appeal be decreed with costs, and the decision of the late *ex-officio* sudder ameen be annulled.

THE 29TH JULY 1848.

No. 27 of 1846.

A Regular Appeal from a decision passed by Moulvee Mahomed Rafiq, late ex-officio Sudder Ameen of Sarun, dated 18th August 1846.

Musst. Ramkullee and Musst. Berinchce, (Defendants,) Appellants,
versus

Sheonundun Rac, (Plaintiff,) Respondent.

THE particulars of this suit are recorded under No. 26 of 1846. Appellants prefer this separate appeal, objecting to their costs being made payable by Rameshur Ram Tewary. The claim of respondent having been rejected with full costs,

ORDERED,

That this appeal be also decreed with costs against respondent.

THE 29TH JULY 1848.

No. 161 of 1847.

A Regular Appeal from a decision passed by Syed Asud Ali, Moonsiff of Chupra, dated 31st July 1847.

Gopallal, (Defendant,) Appellant,

versus

Jailal Singh, (Plaintiff,) Repondent.

CLAIM, to annul a deed of sale executed in favor of Gopallal by Toolsee and Chutroo, and for purchase of the land mentioned therein by right of pre-emption, value Company's rupees 5.

“The 29th June 1848.

“This suit was remanded for re-trial on the 31st May 1847, (*vide* Decisions of zillah courts for May 1847, page 57,) upon the ground

that appellant had pleaded that he also was a co-proprietor in the village, and which respondent in his replication had not denied, and therefore he, appellant, appeared equally entitled to purchase under the law of pre-emption; and secondly, because a decree had been passed in favor of the "shafee" without calling for the bill of sale, in order to ascertain what rights it conveyed.

The moonsiff of Chupra, after calling for the bill of sale, has now confirmed his former decision in favor of the "shafee," upon the grounds that the preliminaries of the Mahomedan law had been fulfilled, and that plaintiff's right of pre-emption as a proprietor by heritage, and relative, appeared superior to that of defendant, who had acquired his property by purchase.

JUDGMENT.*

The defendant again appeals, dissatisfied with the lower court's decision. I am opinion that if the purchaser be also a sharer and neighbour, another sharer cannot supersede his right of purchase upon the plea of being a sharer by heritage in contradistinction to a sharer by purchase, as the Mahomedan law of pre-emption (as interpreted by Macnaghten) makes no such distinction. But independent of the foregoing grounds, I should have hesitation in upholding the transfer of property upon a bill of sale in which the subject of sale is so vaguely expressed. By the bill of sale 2 biswas of low land and 12 doors of high land situated amidst seven ryots' houses (named) are transferred, without any specification of boundaries or such particulars as would render the execution of a decree, based thereupon, practicable.

I therefore again admit this appeal, and direct that respondent be served with a notice, in order that he may attend and state his objections to a reversal of the moonsiff's decision."

From the evidence of two witnesses adduced by the "shafee," it would appear that the subject of sale is situated in the plaintiff's share, but the abstracts from registers filed by respondent do not substantiate any legal division of property; moreover, the bill of sale is defective, it conveys 2 cottahs and 12 doors of land in different places without mention of boundaries, it would be improper to found a decree in favor of plaintiff upon such an indefinite subject of sale; for this reason I decree for the appellant, and dismiss the plaintiff's claim, and reverse the decision of the lower court. The parties in this suit must pay their own costs of suit.

THE 29TH JULY 1848.

No. 24 of 1846.

A Regular Appeal from a decision passed by Moulvee Mahomed Rafiq, late ex-officio Sudder Ameen of Sarun, dated 19th August 1846.

Akber Singh and Sheopershad Singh, purchasers, (Defendants,) Appellants,

versus

Bagelee Singh, (Plaintiff,) Respondent.

Ramperkash, Noora Singh, and Bedil Kooer, (former maliks,) other defendants by precaution.

CLAIM, for Company's rupees 792-9-10, being principal, interest, and exchange, of revenue of talook Tirpal Bussunt, pergunnah Baul, as per collector's receipt, dated 6th July 1836.

"The 6th July 1848.

"The particulars of this suit are as follows. The talook Tirpal Bussunt was sold for arrears of revenue, and Akber and Sheopershad, to whom it was mortgaged and had reverted by absolute purchase, offered the commissioner the arrears after the sale had taken place, which (according to the mistaken policy of those days) was accepted conditionally; but plaintiff states that the mortgagees being unable to liquidate the required sum applied to the plaintiff, who, upon their solicitation, paid rupees 400 into the collectorate on their account, and thereby obtained the reversal of the sale, and produces the collector's receipt and the duplicate chelan, bearing the treasurer's signature, in proof of payment *through him*, and now sues the maliks to recover the amount with interest as follows:

	Sa. Rs.		
Principal,	400		
Interest,	400		
	<hr/>		
Sicca Rupees ..	800		
or Company's rupees	853	5	4
Deduct paid,	40		
Interest,	20	11	6
	<hr/>		
	60	11	6
	<hr/>		
Balance, Company's rupees ..	792	9	10
	<hr/>		

The defendants, Akber Singh and Sheopershad Singh, state that plaintiff is indebted to them largely, and has anticipated them with

this false counter-claim ; that they, the defendants, sent the 400 rupees from their village by Ramdhun peadah, in order to cancel the sale ; and that Bagelec Sing, who was proceeding to Chupra at any rate, accompanied Ramdhun, and was requested to see the money safely delivered ; that they also wrote to Sunneram, a muhajun of Chupra, through whose hands the arrears were to be paid ; that the peadah accordingly delivered the money to Sunneram, who, in the presence of Bagelee, caused it to be paid into the collector's treasury ; and that Sunneram afterwards sent a reply, informing them that he had done so, and the fact of the money having been paid through plaintiff was no proof that the money actually belonged to him. •

The sudder ameen correctly observes that the point at issue in this is, to whom did the money belong ? And referring to the collector's receipt and deposit account, finds that it was paid through Bagelec, and as plaintiff's witness corroborate this fact, he rejects the defendants' witnesses as incredible, and decrees in favor of plaintiff, observing that, if the money had been sent by defendants, the receipt would have been expressed "dusti Sunneram marfut Ramdhun," whereas it was "marfut Bagelee dusti Sunneram." •

Defendants appeal, observing that the words dusti and marfut in the chalan and receipt are transposed ; that, if the money belonged to plaintiff and was paid in by him on defendants' account, plaintiff would certainly have some bond, or acknowledgment on the part of defendants to produce ; that plaintiff's witnesses were suborned dependants, and their evidence by no means trustworthy.

JUDGMENT.

By referring to the receipt and chalan, I find that the expressions used in these two documents are directly contrary. In the former the money is said to be paid in "marfut Bagelee Singh dusti Sunneram," and in the latter it is despatched "marfut Sunneram dusti Bagelee Singh ;" the lower court would appear to have overlooked this discrepancy ; moreover, neither of these expressions *through* or *by the hands of*, which are nearly synonymous, determine the exact point at issue, namely, *to whom did the money belong ?* The sudder ameen has rightly stated the point at issue, but has not found upon that issue : his decision is based entirely upon the above documents, which contain a material discrepancy ; the evidence cited by the parties is also contradictory ; but there appears to be other good circumstantial evidence forthcoming in this case, in proof of the money having belonged to and having been despatched by the appellants Akber Singh and Sheopershad Singh.

First, Akber and Sheopershad had become and were at the time proprietors of the estate by absolute purchase, and it was upon their representation and promise to pay up the arrears that the sale was ordered to be cancelled; and the payment of those arrears, by whom and through whom, is the point to be determined; secondly, it does not appear from the proceedings what proprietary right, if any, Bagelee possessed in the estate, or that he was any party in effecting the annulment of the sale; thirdly, if the arrears were in truth paid by plaintiff on defendants' requisition, and on defendants' account, it is natural to suppose that plaintiff would have taken defendants' bond, or some acknowledgment for the amount so advanced, but according to plaintiff's statement he paid into the collectorate 400 rupees on defendants' account, without taking any acknowledgment whatever: this is very improbable; fourthly, the letter of Sunneram (the Chupra merchant) to defendants (Akber and Sheopershad) written on the same day, acknowledges the receipt of the amount remitted by them, and informs them that he had duly paid in the amount on their account. These are strong circumstantial grounds for believing that the money belonged to, and was remitted by defendants, and that plaintiff was employed merely to see that it was duly paid, but for some unknown cause has adopted this device of claiming the money as his own, and now sues the defendants, probably in order to cancel his own debt to them.

Before, however, deciding finally upon this case, it was deemed most essential to have the evidence of Sunneram, through whose hands the money passed, and whose name appears both on the receipt and chelan.

The evidence of Sunneram was accordingly taken this day on solemn affirmation: he distinctly acknowledges his letter, addressed to Akber Singh and Sheopershad Singh, and infers from its contents that the money must have belonged to Akber Singh and Sheopershad Singh.

ORDERED,

That this appeal be admitted, and notice be served on respondent." 6th July 1848.

Read the objections taken by respondent to the admission of this appeal, which are for the most part a recapitulation of the arguments used in the plaint and replication. Finding no sufficient reason to doubt that this money belonged to the appellants,

ORDERED,

That the decision of the late *ex-officio* sudder ameen of Sarun in this case be reversed, and the claim of respondent be dismissed with costs.

THE 29TH JULY 1848.

No. 25 of 1846.

A Regular Appeal from a decision passed by Moulvee Mahomed Rafiq, late ex-officio Sudder Ameen, of Sarun, dated 19th August 1846.

Bagelee Singh, (Defendant,) Appellant,

versus

Akber Singh, (Plaintiff,) Respondent.

CLAIM, for Company's rupees 507, on a deed of mortgage, including interest and exchange.

This suit was instituted on the 6th November 1845, against Bagelee Singh, appellant, and Noora Singh, for self and as heir of Jairam Singh, deceased, another defendant, setting forth that, on the 5th July 1836, the said Noora Singh and Jairam Singh conjointly borrowed from plaintiff, Sicca rupees 237, 10 annas, 6 pie, upon a mortgage of 10 beegahs 17 doors of land in Muddoopoor, a jageer mehal in pergunnah Baal, stipulating to pay on 30th Bysack 1244 Fussily, failing which the sale of the land so mortgaged was to become absolute; subsequently the said Noora and Jairam with Musst. Basoo Koer, another co-sharer, sold conjointly a fractional share of the estate amounting to 3 annas to Bagelee Singh, under date 17th Poos 1244 Fussily, for rupees 1,900, making mention of the previous mortgage to plaintiff of the 10 beegahs 17 doors, which debt the purchaser was to liquidate. But before the expiration of the stipulated period for payment of the debt on mortgage, the estate was sold for arrears of revenue. Plaintiff therefore sues Noora and Jairam, including Bagelee, the purchaser, for his money with interest and exchange, viz.

Principal,	Sicca rupees ..	237	10	6
Interest,	„	237	10	6
Exchange in Company's rupees,		31	11	0
Total, Company's rupees ..		507	0	0

Noora Singh, in reply, states that it is true that Bagelee engaged to pay plaintiff the prior lien, but in consequence of the sale of the fractional share to Bagelee being objected to by Musst. Basoo, a co-sharer, the sale was cancelled, and Bagelee received back what he had paid (250 rupees) on account of revenue; and in respect to plaintiff's claim, by Construction No. 898 he was interdicted from suing for cash, and should have sued for possession in accordance with the terms of the mortgage.

Bagelee Singh in like manner admits the mortgage, but denies the right of plaintiff to sue for cash, and urges that he never obtained possession.

Plaintiff, in his replication, remarks that as the estate has been sold by Government for arrears of revenue, he has now no other remedy than to demand payment from Bagelee, who, on purchasing the fractional share, rendered himself liable for his (plaintiff's) lien upon the property, and is not absolved from that liability by the revenue sale.

Moulvee Mahomed Rafiq, the late *ex-officio* sudder ameen, observed, that Bagelee was clearly responsible for this debt from the date of his mortgage up to the date of the revenue sale, provided he was in actual possession, inasmuch as payment of this debt was stipulated for in the bill of sale to the said Bagelee, and for which a portion of the property sold to him was mortgaged; that his having been in possession was proved by his own admission of having paid revenue, and having *relinquished* possession, and the witnesses of defendants, who deny this fact, were not to be credited, indeed their evidence was contrary to defendant's own statement,—passing a decree in favor of plaintiff against Bagelee alone, and absolving the other defendants.

JUDGMENT.

I am of opinion that the lower court has taken a wrong view of this case. The debt was incurred by Noora Singh and Jairam Singh, pledging certain property in payment; they subsequently sold that property, with the reservation that the purchaser Bagelee Singh was to liquidate the prior lien; this private sale was however subsequently cancelled in consequence of Musst. Basoo, a co-sharer, objecting to the terms; payment of the debt thus reverted to the original debtors, as the transfer of the debt to another party had become null and void. The only remaining point is in regard to the claim for *cash*. Had the estate *not* been sold for arrears of revenue, plaintiff would not have had his election, he would have been bound to sue for *possession* according to the terms of his contract, and his claim for cash would not have been tenable. But, the revenue sale which intermediately took place, cancelled all private mortgages effected by the proprietors; because by law all estates paying revenue to Government are primarily hypothecated to Government for the revenue assessed thereon. For this reason plaintiff has no alternative but to recover his money with interest from the original debtors (Noora Singh and Jairam Singh,) and Bagelee must be absolved from liability. Upon these grounds the appeal was admitted on the 6th instant, and notice served on the respondent, who still urges the liability of Bagelee Singh, agreeably to the terms of the bill of sale, but, as be-

fore stated, the sale having been cancelled, the purchaser becomes absolved, and plaintiff must look to the original debtors for payment of his money.

IT IS THEREFORE ORDERED,

That this appeal be decreed, and the decision of the late *ex-officio* sudder ameen be reversed, and the amount of plaintiff's claim with interest be liquidated by Noora Singh, (for himself, and as heir of Jairam Singh, deceased,) who will also pay the whole costs of suit, excepting those incurred by Bagelee Singh, which must be liquidated by plaintiff.

ZILLAH SHAHABAD.

PRESENT : H. BROWNLOW, Esq., JUDGE.

THE 4TH JULY 1848.

No. 64 of 1848.

Appeal from the decision of Mr. A. Almeida, Additional Moonsiff of Arrah, dated the 12th February 1848.

Radhakishen Misser, (one of the Defendants,)

Appellant,

versus

Jankce Singh and five others, (Plaintiffs,) Respondents.

THE additional moonsiff draws up this case in the following words.

“ Claim, rupees 35-4½. Arrears of rent.

Plaintiffs sue for the above sum, being the revenue due, according to the putwarry's wasil-bakce, from the defendants for the years from 1251 to 1254 F. S., for an orchard comprised in 2 beegahs, 10 dhoors of land, held by defendants, at the rate of rupees 3-4 per beegah, in mouza Ghageta attached to talooka Kahurpoor Jahangeer Pal, pergunnah Arrah, of which plaintiffs are shareholders of 3 annas.

Toolsec Misser and Gopce Kishen Misser, defendants, plead having no connection with the orchard.

Radhakishen Misser, defendant, answers; that he occupies the orchard, which he acquired by purchase, upon the condition of a payment in kind, or an equal division of the fruit with the proprietors of the soil; that the servants of plaintiffs have also divided the fruit with defendant; and that this suit at money rates is incorrect.

JUDGMENT.

In my opinion the plaintiffs' claim is fully established against Radhakishen Misser, defendant, at modified rates, for the following reasons.

First.—From the perusal of a sale paper dated the 24th April 1835, produced by defendants in case No. 205, copy of which has been appended to this, it appears that the orchard, for the rent of which plaintiffs sue in proportion to their share in the estate in which it is situated, having been brought to sale, was purchased

by Radhakishen Misser, one of the defendants alone, the rest being entirely uninterested in it.

Second.—Radhakishen Misser, defendant, has adduced nothing to prove that he holds the orchard upon the condition of an equal division of the fruit with the proprietors; whereas the report of the peshkar of this court, who was deputed for a local enquiry, and the evidence of Bheekarry Mahton, the former proprietor of the estate, who was examined by that officer, clearly show that the defendant never entered into any arrangement with the late proprietors as to the terms upon which he was to hold the orchard; his statement, therefore, of having always paid in kind, is gratuitous. Since no rates appear to have been fixed upon the orchard, preparatory to the year 1251 F. S., defendant must be made liable for it at the rates borne by the gardens in its vicinity.

Third.—In the report of the peshkar, and the list of the gardens filed therewith, the rates at which they are assessed is stated to be rupees 3 to rupees 3-5, and rupees 2-14, Sicca. No objection is raised by either party to the existence of these rates, wherefore, with reference to every feature of this case, and taking into consideration the fact of the orchard having been free from assessment, anterior to the year 1251 F. S., I conceive the rate of rupees 2-14 per beegah, being the lowest of those borne by the neighbouring gardens, to be a fair and equitable assessment. At this rate the rent of the defendant's orchard, which is comprised in 2 beegahs 10 dhoors of land, amounts to rupees 23-4½ of net revenue, 5 annas, 9 pie, putwarry's fees, 5 annas 9 pie, tax for roads, and rupees 1-9½ batta, total rupees 25-9½ which, with rupees 4-5, interest, amounts to rupees 29-14½, to which the plaintiffs are entitled. For this last sum, being the gross revenue of 2 beegahs 10 dhoors of land, calculated at the rate of rupees 2-14 Sicca, per beegah, I decree in favor of plaintiffs, with interest upon the principal, from the date of action to the day of decision, with further interest upon the aggregate thereof and the legal expenses to the day of final realization, recoverable from Radhakishen Misser, defendant, alone; the other defendants being exempted."

In appeal, it is repeated that he (the appellant) holds the orchard upon a bhaolee tenure, and has divided the produce with the respondents in former years, to which one of the late maliks had also testified; that although the moonsiff has ruled that the orchard has been subject to a money assessment, yet he acknowledges that the actual rate was uncertain, which indicates that the payment has hitherto been not in money, but in kind; and that it is incorrect to fix a money rate upon an orchard of mangoe trees, since they only bear fruit every other year.

The evidence in this case is, in my opinion, clearly in favor of a nukdec, and not a bhaolee rent. I therefore uphold the judgment of the lower court, and dismiss the appeal with costs.

THE 4TH JULY 1848.

No. 62 of 1848.

Appeal from the decision of Mr. A. Almeida, Additional Moonsiff of Arrah, dated 12th February 1848.

Jankee Sing, Ubheeram Sing, and Talewund Sing, (Plaintiffs,) Appellants,

versus

Toolsee Ram Misser, Radhakishen Misser, and Goopeekishen Misser, (Defendants,) Respondents.

THIS and case No. 64 are two appeals from one decision of the additional moonsiff, dated the 12th February 1848.

The appellants object to the exemption of Toolsee Misser and Goopeekishen Misser, asserting that the respondents, being three *own* brothers, are all equally liable; and that the reduction of the rate for the orchard land, from rupees 3-8, at which they sued, to rupees 2-14, has nothing on record to bear it out, nor is it the average of those reported to be prevalent by the officer who conducted the local investigation.

These objections have been satisfactorily disposed of by the lower court; and being of opinion that no sufficient grounds have been shewn to impugn the correctness of the decision, I confirm the same, and dismiss the appeal with costs.

THE 4TH JULY 1848.

No. 65 of 1848.

Appeal from the decision of Mr. A. Almeida, Additional Moonsiff of Arrah, dated 12th February 1848.

Bhurt Bukal, Ramphul Bukal, and Saheb Bukal, (Defendants,) Appellants,

versus

Ramsurn Sing and Dabee Sing, (Plaintiffs,) Respondents.

THIS case is thus drawn up by the additional moonsiff.

“ Claim, rupees 8-9½. Arrears of rent.

Plaintiffs sue for the above sum, being the revenue due from the defendants agreeably to the putwarry's wasilbakee from the year 1251 to 1254 F. S., for an orchard occupying 9 cottahs 1 dhoor of land, situate in mouzah Ghageta, attached to talooka Kahurpoor, Jahangeer Pah, pergunnah Arrah, in which estate plaintiffs possess an interest of 4½ annas.

Defendants answer that the orchard has been held by them upon the terms of an equal division of the fruit with the proprie-

tors of the soil, ever since its plantation; and that the servants of the plaintiffs have also divided the fruit with the defendants.

JUDGMENT.

I am of opinion that the plaintiffs' claim has been proved at modified rates, for the following reasons:

First. From the evidence of the putwarry and other individuals adduced by plaintiffs, it is evident that the defendants' orchard has always been assessed at money rates. Defendants have produced no documents to show that they have held their orchard upon the terms pleaded by them; nor have they filed any receipts to establish the delivery of an half share of the fruit to the servants of plaintiffs, in any one year, as alleged by them; thus the simple *ipse dixit* of the defendants is insufficient to substantiate the possession of defendants over the orchard, upon a payment in kind, in other words, an equal division of the fruit with the proprietors of the soil, as contended by them.

Second. The report of the peshkar of this court, who was deputed for a local enquiry, and the evidence of Bekharry Multon, the late proprietor, from whose time the orchard is stated to be held by defendants at bhowlee rates, also unite in showing the payment to have always been in money.

Third. Although there is no doubt of the orchard having borne a money assessment, yet the rate at which payment was made, previous to the year 1251 F. S., is not apparent. The peshkar reports the rates prevalent in the neighbourhood of the defendants' orchard to be rupees 3, rupees 3-5, and rupees 2-14. The correctness of this report has not been impeached by either party; and since the rate that obtained prior to the year 1251 F. S., cannot be ascertained, I conceive rupees 2-14 per biggah, which is the minimum of the rates fixed for similar orchards in the neighbourhood, to be a very fair assessment, and at this plaintiffs are, in my opinion, entitled to recover their rents: thus the revenue of 9 cottahs 1 dhoor of land at the above rate amounts to rupees 5-7½, which, with 2½ annas putwarry's fees, ¼ annas tax for roads, 5½ annas batta, and 14½ annas interest, make up a total sum of rupees 6-15, to which amount, plaintiffs have a fair title. I therefore decree in their favor for rupees 6-15, with costs of suit, and interest upon the principal, from the date of action to the day of decision, with further interest upon the aggregate of that sum and the legal expences, to the day of final recovery."

The grounds of appeal in this case are the same as those urged in No. 64 of 1848, disposed of this day, q. v.

The additional moonsiff took a great deal of pains to arrive at a correct decision in these cases; and I agree with him in thinking that the evidence for the money rent preponderates over that for the payment in kind. I therefore uphold his order, and dismiss the appeal with costs.

THE 4TH JULY 1848.

No. 63 of 1848.

Appeal from the decision of Mr. A. Almeida, Additional Moonsiff of Arrah, dated 12th February 1848.

Ramsurn Sing and Dobee Sing, (Plaintiffs,) Appellants,
versus

Bhurt Bukal, Ramphul Bukal, and Sahib Bukal, (Defendants,) Respondents.

THIS appeal and that noticed under No. 65 are from the same decision of the additional moonsiff, dated 12th February 1848.

The appellants contend against the reduction of the rate of the orchard land from rupees 3-8, at which they sued, to rupees 2-14, alleging that there was nothing to warrant the modification, nor is the rate assessed the average of those reported to be prevalent by the officer who conducted the local enquiry.

I am of opinion that, under the circumstances, the additional moonsiff has acted correctly in awarding the lowest rate of similar land.

I therefore uphold the judgment of the lower court, and dismiss the appeal with costs.

THE 5TH JULY 1848.

No. 74 of 1848.

Appeal from the decision of Mr. A. Almeida, Additional Moonsiff of Arrah, dated 11th March 1848.

Hunkan Pande and Dwarka Pande, (Defendants,) Appellants,
versus

Nukchade Pande and Munoruth Pande, (Plaintiffs,) Respondents.

THIS case is drawn up by the additional moonsiff in the following words:

“ Claim, rupees 150. Arrears of revenue.

Plaintiffs sue for the above sum, being principal and interest of the revenue due from defendants agreeably to the putwarry's wasilbakee for the year 1248 F. S., at the rate of 3 rupees per beegah, for a cultivation of 44 beegahs of land held by them in mouzah Bishenpoor Babungawa, pergunnah Arrah. Hunkar Pande, defendant, admits holding a cultivation of 19 beegahs, 16 cottahs, 6 dhoors of land, at the rate of 1-8 per beegah, and alleges having paid the revenue due from him to Shah Ullec Buksh, the plaintiff's coparcener, for which he holds a farkuttee, dated the 7th Assar 1248 F. S.

Dwarka Pande, defendant, denies cultivating.

JUDGMENT.

I believe the plaintiffs' claim to be correct for the following reasons:

First. From the evidence of the putwarry, and the other witnesses named by the plaintiffs, some of whom were examined in this court, and others before the ameen in the mofussil enquiry held by that officer, it is apparent that the defendants jointly cultivated 44 beegahs of land in mouzah Bishenpoor Babungawa, pergunnah Arrah, (which, by the late measurement of the ameen, amounts to 45 beegahs, 6 cottahs, 8 dhoors, 16 dhoorkies,) in the year 1248 F. S., at the rate of 3 rupees per beegah.

Second. Hurkan Pande, the defendant, has filed no proofs to establish his holding 19 beegahs, 16 cottahs, 6 dhoors, paying at the rate of 1-8 per beegah. Nor is there any evidence to prove the payment to Shah Ullee Buxsh, nor any to verify the farkuttee of the 7th Assar 1248. The putwarry's papers, tendered by defendant, are likewise of no avail to him, for they are for the year 1249 F. S., whereas this claim is for a previous year, viz. 1248 F. S. A perusal of the decree of this court, dated the 12th December 1845, further shows that plaintiffs once obtained a summary decree against defendants for the rent of 44 beegahs of land, at the rate of 3 rupees per beegah for the year 1249 F. S., which, upon being contested in this court by a regular action, was upheld. Plaintiffs having thus once acquired an award in their favor, at the rate of 3 rupees per beegah, the putwarry's papers, which exhibit diminution of land and a modified rate, contrary to it, cannot be relied upon.

Third. Although Dwarka Pande, defendant, denies cultivating in conjunction with Hunkan Pande, yet the decree above noticed clearly shows that both united in cultivating the lands, and as they have not been able to establish a separation of interests since, their bare denial can be of no benefit to them.

Fourth. Though the land in the cultivation of the defendants amounts to beegahs 45-6-8-16, by the recent measurement of the ameen, yet as plaintiffs merely sue for the rent of 44 beegahs at the rate of 3 rupees per beegah, at which they appear to have realized the rent of the years 1243 and 1249 F. S., from the decree already alluded to, I conceive them entitled to the rent of only 44 beegahs of land, at the rate of 3 rupees, which has been ascertained by the ameen to be the current rate. I therefore decree in favor of plaintiffs the entire claim, together with costs of suit and interest upon the principal from the date of action to the day of decision, with further interest upon the aggregate of that sum and the legal expences to the day of final recovery."

The appellants deny having cultivated in partnership in the year 1248 F. S. Hunkan Pande acknowledges a cultivation quite dis-

tinct from that for which arrears are demanded, and asserts that the decree of the moonsiff of the 12th December 1845, was no proof in favor of the respondents in this case, as it had reference to other lands.

The judgment of the lower court is fully borne out by the evidence adduced by the plaintiffs; and not one particle of proof, either oral or documentary has been brought forward by the defendants to rebut the same.

I therefore confirm the judgment of the additional moonsiff, and dismiss the appeal with costs.

THE 6TH JULY 1848.

No. 75 of 1848.

Appeal from the decision of Mr. A. Almeida, Additional Moonsiff of Arrah, dated 15th March 1848.

Maharaj Sing, (Plaintiff,) Appellant,

versus

Sumann Opadheca and six others, (Defendants,) Respondents.

THE additional moonsiff draws up this case in the following words :

“ Claim, reversal of a sale.

Plaintiff sues for the cancelment of the sale of a tenement of 5 beegahs, 6 cottahs, 4 dhoores held by Joba Koormee, in mouzah Burogaon, pergunnah Arrah, valuing his action at rupees 9, being the sum for which the jote was sold. Plaintiff states that this sale, which took place in execution of the decree of Sumann Opadheca and others, is illegal, because Joba Koormee, the alleged tenant of the holding, is in arrears to him for the rent; and that, having obtained a summary decree against the ryot, he had settled the land with Mr. G. Miller, of Goondie factory, before even the sale was held. Sumann Opadheca and the other decree-holders, defendants, answer that the holding was Joba Koormee's up to the day of sale, and that he settled it with Mr. Miller.

JUDGMENT.

I consider the plaintiff's claim to be unfounded for the following reasons :

First. There is nothing to show that plaintiff objected to the sale before it took place, on the ground of the former tenant being in balances to him for the rent of his holding; consequently under Construction No. 890,* of the 11th July 1834, (which allows of the tenements of ryots being sold in execution of decrees against them, in the event of no objection being preferred by the proprietor of the soil), I conceive this sale, which was held after due promulgation of the usual proclamation, and without any

objection being offered by the plaintiff, in whose estate the kasht is situated, to be perfectly legal and valid. This action, by which it is sought to obtain the reversal of the sale after it has been summarily confirmed, upon the bare plea of balances of revenue said to be owing to plaintiff, is wholly untenable.

Second. It is of no avail to plaintiff to urge that he has settled the holding in question with Mr. Miller, of Goondce factory, from the year 1254 F. S. If such an arrangement of the tenement held by Joba Koormce has actually been concluded by plaintiff, with Mr. Miller, the auction purchaser and Mr. Miller will know best how to settle the affair among themselves; but the sale itself cannot become invalid by that circumstance. Seeing no reason to annul the sale, I dismiss the plaintiff's action, with legal expenses incurred by defendants chargeable to him, with interest to the date of the final payment."

The appellant pleads that the above holding being situated in his estate, was not salable without his consent under the 890th Construction; that the former ryot was in arrears to him for the rent; and that it was only because appellant was ignorant of the issue of the sale notification that he neglected to urge these objections before the sale took place; and that he had previously settled the same jote with Mr. Miller, which was another obstacle to the sale.

Under Construction No. 890, the rights and interests of a jotedar may be sold in satisfaction of a decree given against him. Those of Joba Koormce were sold, and there was no informality in the sale that I can discover. Plaintiff's present claim, therefore, to get this sale annulled, cannot stand.

I accordingly uphold the judgment of the lower court, and dismiss the appeal with costs.

THE 7TH JULY 1848.

No. 87 of 1848.

Appeal from the decision of Mr. A. Almeida, Additional Moonsiff of Arrah, dated 9th March 1848.

Zoolfukar Aily, (Plaintiff,) Appellant,

versus

Musst. Mithooah and six others, (Defendants,) Respondents.

THE additional moonsiff drays up this case in the following words:

"Claim, possession of some land.

Plaintiff sues to obtain possession and to have his name entered in the rent roll as proprietor of 5-6th out of 6-6th in one share of three shares of chuk Seerajooden, pergunnah Arrah, in virtue

of a deed of sale, executed in his favor on the 13th November 1832 A. D., corresponding with the 25th Kartick 1250 F. S., by Musst. Mithooa and Bhoodhun ; and the cancelment of a zurpeshgee lease, alleged to be held by Bachun Rae and Zoolfukar Ally ; as well as to recover rupees 51-10-7-9, the mesne proceeds of the land from the year 1250 to 1253 F. S. The land is valued at rupees 11-4-3, being three times the annual rental.

Mosahib Ally (defendant) answers that mouzah chuk Seerajooden is held by three parties in three distinct shares, viz. one share by himself, another by Musstn. Boodhun and Punnooah, and the third by Sheikh Khodabuksh, Kurramut Ally, and Ruhmut Ally. That 15 beegahs, which composes two-thirds of the estate, was farmed to Bochun Rae and Zoolfukar Ally by the share-holders thereof, agreeably to a deed dated the 22d Sawun 1246 F. S. That upon the share of Kurramut Ally and Khodabuksh being brought to sale in satisfaction of a decree, defendant purchased it, and, having restored the zurpeshgee and a debt of rupees 25 to Bochun Rae and Zoolfukar Ally, obtained possession ; and that there can be no obstacle to plaintiff's obtaining possession upon his clearing his quota of the above incumbrances.

Bunjun Rae and the heirs of Zoolfukar Ally confirm the statement of Mosahib Ally, whilst Musstn. Mithooa and Boodhun side with the plaintiff.

JUDGMENT.

I consider the plaintiff's claim to be incorrect for the following reasons :

First. Although Musstn. Mithooa and Boodhun acknowledge having sold to plaintiff 5-6ths out of 6-6ths of one share in three shares of chuk Seerajooden, pergunnah Arrah ; but there is nothing to prove that Musst. Mithooa, one of the sellers, ever held any interest in, or that Musst. Boodhun was proprietress of the property to the extent she has sold ; consequently plaintiff cannot be put in possession of so much of the estate as he seeks to recover.

Second. From the perusal of an umuldustuk signed by the superintendent of settlements dated the 22d April 1840, it appears that chuk Seerajooden has been permanently settled in three shares, viz. one share with Mosahib Ally, the defendant, another with Kurramut Ally, Khodabuksh, and Ruhmut Ally, and the third with Musstn. Boodhun and Punnooah. In this case, and as no other proof has been tendered, Musst. Boodhun, one of the sellers, can only be held to be a half shareholder in a third of the estate ; and to this extent alone, the purchase of the plaintiff can be upheld.

Third. From the deed dated the 17th August 1839, which has been fully verified by the evidence of the subscribing witnesses, it is clear that Kurramut Ally, Khodabuksh, Ruhmut Ally, Musst.

Boodhun, and Musst. Punnooh, having borrowed the sum of rupees 100 from Bunjun Rae and Zoolfekar Ally, let to them 15 beegahs, being the total amount of land belonging to their joint shares in chuk Seerajodeen. Although this deed does not bear the seal of the cazee and has not been registered, yet the absence of such recognition of an instrument is not enough to invalidate it. Moreover, the present deed appears to have been filed in the courts of justice on two occasions, before ever plaintiff became a purchaser, to wit, in this court on the 17th December 1842, and in the collectorate on the 3d April 1843. This zurpeshgee was also notified at the time the rights and interests of Kurramut Ally and Khodabuksh were sold in execution of a decree; and Bunjun Rae and the heirs of Zoolfekar Ally likewise assert that Mosahib Ally assumed possession of his auction purchase, after having made good the advance owing to them. Under these circumstances, until plaintiff is prepared to refund his quota of the zurpeshgee, he cannot be put in possession of Musst. Boodhun's share of the estate, but as plaintiff prays for the annulment of the zurpeshgee lease, a transaction which has been most satisfactorily proved, and makes no offer to liquidate the amount previously to becoming possessed of the property, his suit is inadmissible, and is therefore dismissed with all law charges incurred by defendants chargeable to plaintiff, with interest to the date of final payment."

In appeal, it is repeated that Musst. Mithooa actually owned that portion of the estate which she sold to the appellant under a duly registered deed; that the right she acquired in it by inheritance was not destroyed by her exclusion from the permanent settlement; and that the zurpeshgee bond produced by the respondents is an invalid document, in consequence of its never having been attested by the local cazee nor registered.

I entirely agree with the additional moonsiff in the view which he has taken of this case; and no grounds whatever have been adduced by the appellant to impugn the correctness of the decision, which is hereby affirmed, and the appeal dismissed with costs.

THE 8TH JULY 1848.

No. 58 of 1848.

Appeal from the decision of Mr. A. Almeida, Additional Moonsiff of Arrah, dated 8th February 1848.

Sheik Ameerodeen Mahomed, (Plaintiff,) Appellant,

versus

Meer Khadim Ally and seven others, (Defendants,) Respondents.

THE additional moonsiff draws up this case in the following words:

“ Claim, demolition of a wall, &c.

Plaintiff sues for the demolition of a wall measuring thirty-two cubits north and south, and twenty-seven cubits east and west, and of a chabootra twenty-three cubits north and south, one and a half cubit in breadth, and one in height, as well as for the removal of a wall partly kutchra and partly pukka, together with the chupper on it, being nine cubits in length, one and a half cubit in breadth, and one and half in height, and of a portion of a wall with its chupper, &c., being eighteen cubits in length, one and a half cubit in breadth, and five cubits in height, and a pukka chabootra nine cubits in length, four in breadth, and one in height, as also for the closure of two doors, the one to the east having a wooden frame, and that to the north being without any, likewise for the stoppage of a drain running east. Plaintiff states that all these are recent additions and preparations, which tend greatly to inconvenience him in his progress to and from his own house.

Khadim Ally, one of the defendants, answers that what plaintiff alleges to have been newly made are old works, of which the wall was only built anew upon its former site, after the parties had come to an explanation about it, and from no portion of the defendant's buildings does any inconvenience arise to plaintiff.

The other defendants deny having any connection with this action, further than that the parties came to an understanding about the erection of the wall alluded to, by Khadim Ally, defendant, through their intervention; and that they have been prosecuted only with the view to prevent this fact from being brought to light by their evidence.

JUDGMENT.

I hold the plaintiff's claim to be unjust for the following reasons:

First. Independent of the testimony of the defendant's witnesses, and the report of the peshkar of this court, who was deputed for a local enquiry, it is evident from the deposition given by plaintiff himself, on the 23d May 1840, copy of which has been filed by defendants, that the doors attached to the northern and eastern walls of Musst. Rujjeah's house, have stood there of old, and so has the drain which runs under the eastern door. Thus these doors not being late preparations, cannot be closed at the plaintiff's solicitation. It was alleged by plaintiff when pleading this case in person just now, that one of the doors alluded to in his deposition, stood in a wall to the south, and opened into Musst Rujjeah's compound; and an exit from the house through it, could only be made by passing through an opening in the eastern wall, and then coming out at another old standing door to the north. This can hardly be credited, for if such were the position of the door, mentioned in the plaintiff's deposition, it would have been termed southern, for opening to the south, and not northern.

Second. The postah to the east of defendants' house, which plaintiff designates a newly made chabootra, is also proved by the evidence of the plaintiff's own witnesses to have subsisted since the ownership of the former proprietors, and appears, on a personal inspection of the spot by me, to be productive of no inconvenience whatever to the plaintiff. For in the first place I observe that there is no door opening from the plaintiff's purchased house in the lane; and secondly, the lane is wider betwixt the houses of the parties, than it is where no dispute exists. For instance the width of the lane from the bottom of defendants' postah to the extremity of the wall of the plaintiff's purchased house, is four cubits ten tuswoos; whereas a little lower down to the south, from the chabootra of the houses of Musst. Eddoo and Bolakce Hajjam, to the wall of the houses to the east, the breadth of the same intervening lane is only three cubits ten tuswoos.

Third. Although Muzhur Ally and Chuttoo, two of the plaintiff's witnesses, depose to the wall to the east and west and north and south having been removed from its old site, as stated by plaintiff, yet the testimony of merely two witnesses is not enough, in my estimation, to warrant its demolition. For from the depositions of all the witnesses adduced by defendants, as well as from the report of the peshkar, and especially from the evidence of Warris Ahmud, who is the plaintiff's son-in-law, it is apparent that the wall in question was raised afresh after the parties had come to an explanation. The chopper, placed over the wall, has been evidently put there for its preservation, and is certainly a very necessary appendage to a wall. Having personally viewed these, I do not perceive that plaintiff can reasonably complain of any inconvenience; nor do I see how they can be any hindrance to a horseman passing through the lane, even admitting, as deposed by plaintiff's witnesses, that the only preservatives the wall formerly had, were the leaves of tar trees and some straw, though this must, no doubt, be attributed to the poverty of the former proprietor of the house, yet it can form no obstacle to a tiled chopper being placed on the wall by defendants, who, after having purchased the house, immediately proceeded to repair the wall.

Fourth. The chabootra, to the north, which the plaintiff alleges to be a new addition, is proved by the evidence of the defendants' witnesses and the report of the peshkar to have been a verandah, which now stands in its old site as a chabootra, the roof having been since destroyed. Although Muzhur Ally and Chuttoo, two of the plaintiff's witnesses, Warris Ahmud, one of the defendants' witnesses, (but as noticed elsewhere, the plaintiff's son-in-law,) and Mahomed Hossein, who was examined by the peshkar, depose that the chabootra has exceeded its former bounds by one and a quarter cubit; yet such evidence is not sufficient, in my opinion, to establish the encroachment; for they are unable to define its original

length and breadth, and must necessarily be disbelieved if they assert that the chabootra has exceeded its former limits. This spot too having undergone my personal inspection, I find that the door of the plaintiff's hereditary house, where he does not reside, is N. W. of the chabootra, to the north of the defendants' dwelling, and at some distance; the chabootra of Hyder Buksh lying between that of defendants and the door of the plaintiff's house. The plaintiff's road from his house passes from the north-west to the south-east corner, taking two turns, and passing by Hyder Buksh's chabootra. Thus plaintiff can feel no inconvenience from the defendants' chabootra, nor has Hyder Buksh, whose chabootra adjoins that of the defendants', offered any objections. Upon the whole, I conceive the plaintiff's action to be groundless, and dismiss it with all legal expences incurred by defendants chargeable to him, with interest to the date of final payment."

The appellant urges that the additions made by the respondents to their house, have all been lately effected; that the encroachments on the road have made it now so narrow as to render the passage to his house, on occasions of rejoicings and mournings, quite inconvenient, as might have been seen by the additional moonsiff, who personally visited the spot.

The decision of the lower court has been drawn up with such extreme carefulness that I can find no grounds for interference whatever.

I accordingly affirm the judgment of the additional moonsiff, and dismiss the appeal with costs.

THE 11TH JULY 1848.

No 89 of 1848.

Appeal from the decision of Mr. A. Almeida, Additional Moonsiff of Arrah, dated the 13th March 1848.

Syed Ghalib Ally, Syed Ameer Ally, and Musst. Wahedoon,
(Plaintiffs,) Appellants, . .

versus

Choonee Lall, (Defendant,) Respondent.

THE additional moonsiff draws up this case in the following words:

"Claim, rupees 11-8. Arrears of rent.

Plaintiffs sue for the above sum, being the revenue due from defendant agreeably to the putwarry's wasilbakee, for the year

1252 F. S., at the rate of 3-10 per beegah, for a tenement of 3 beegahs 10 cottahs of land purchased by him, and for an orchard, occupying 3 beegahs 16 cottahs of land, from the year 1252 to 1254 F. S., at the rate of 2-12, situate in mouzah Pout Pinjreawun and Pout Saloo, talooka Bussuntpoor, pergunnah Arrah, where plaintiffs hold an interest of $2\frac{3}{4}$ annas.

Defendant answers that he bought a holding of 3-10, pertaining to Baja Roy, at an auction sale in the year 1252 F. S., and forthwith sold the same to Surrin Bahadoor Roy, who is answerable for the rents, and from whom, in fact, the other maliks have realized it; that the orchard is held by defendant at the rate of 1 per beegah, agreeably to a pottah granted to his father by all the maliks on the 25th Kartick 1245 F. S., or 5th November 1840, at which rate he has always paid, and is even now ready to pay, the rent to plaintiffs.

JUDGMENT.

I hold the plaintiffs' suit for the rent of the land for the year 1252 F. S., and of the orchard, at a higher rate than 1 per beegah, to be unfounded, for the following reasons :

First. From the evidence of the witnesses named by defendant, it is apparent that he purchased the tenants' right held by Baja Roy in the above tenement, in the month of Phagoon 1252 F. S., and therefore cannot be liable for the rent of that year; since the month of Phagoon is much posterior to the season of cultivation. Plaintiffs have every right to demand the rent of that year from the individual that may have cultivated and reaped a crop from the land.

Second. Defendant's father having obtained a pottah from all the maliks of talooka Bussuntpoor, pergunnah Arrah, at the rate of 1 per beegah, for 3 beegahs 16 cottahs of land, he cannot be fairly subjected to any higher rate of rent, for the pottah in question has not been set aside by any court, nor did the plaintiffs, upon becoming purchasers of $2\frac{3}{4}$ annas of Pout Pinjreawun and Pout Saloo issue the notice prescribed by Sections 9 and 10, Regulation V. of 1812, in order to fix the jumma of their tenants. The existence of the pottah, which is dated the 25th Kartick 1248 F. S., previous to the purchase of the plaintiffs, which took place in the year 1249 F. S., is also manifest from the testimony of the witnesses produced by the defendant in this court, and those examined on his behalf before Bishen Sahae, the ameen; as well as the correspondence of the jumma mentioned in the pottah, with that found in the papers filed by the putwarry for the year 1251 F. S., and borne on the receipt and acquittances produced by the defendant. Hunsraj Dass putwarry, one of the plaintiffs' witnesses, also deposes that the rate formerly fixed on the defendant's orchard was 1 per beegah; but that he raised it at the

instance of the plaintiffs, when drawing up the wasilbakce. I therefore decree in favor of plaintiffs the sum of rupees 1-15, being their portion of the rent of 3 beegahs, 16 cottahs of orchard land at the rate of 1 per beegah, together with costs of suit in proportion, and interest to the date of final.

The expence incurred in the deputation of the two ameens, who have been employed in this case, is to be borne by the plaintiffs, because they failed in establishing the points upon which the enquiries were ordered."

In appeal, it is urged that respondent having purchased the jote in Phagoon 1252, was liable for rent from that month to Jeit of the same year; that the pottah put in by respondent for the orchard land, is untrustworthy; that there was no necessity for the issue of a notice under Regulation V. of 1812, as the rate at which appellants sought to recover the rent, was the same at which respondent's predecessor had paid; and that the receipts, acquittances, and putwarry's papers for 1251 F. S., filed by the respondent, are all undeserving of credit.

The appellants can scarcely expect anything more than they have got, after the meagre evidence adduced by them, which positively proves nothing.

I therefore affirm the judgment of the lower court, and dismiss the appeal with costs.

THE 12TH JULY 1848.

No. 111 of 1848.

Appeal from the decision of Mr. A. Almeida, Additional Moonsiff of Arrah, dated 30th March 1848.

Pertaub Sing, Bekurmajeet Sing, and Khurrugjeet Sing,
(Plaintiffs,) Appellants, .

versus .

Nursing Narain, (Defendants,) Respondents.

THE additional moonsiff draws up this case in the following words :

"Claim, reversal of an order under Act IV. of 1840.

Plaintiffs sue for the cancelment of an order issued by the magistrate under Act IV. of 1840, on the 7th July 1847, directing the demolition of a portion of their wall, and the removal of a three corned tiled roof, which stood thereon. Plaintiffs state that their wall has always been higher than that of defendant; and that the

water from the eaves of their roof has hitherto^d dropped to the west, on the tiled roof of defendant's house.

Defendant answers that his wall and that of plaintiffs have always been of equal height; that the plaintiffs never had a triangular roof; but one that fell sloping on both sides, and that the water from the eaves of plaintiffs' house never dropped to the west on his chopper, but on the north and south.

JUDGMENT.

I consider that portion of the plaintiffs' claim, which seeks to have their wall continued higher than that of defendant to be just; but that much of it, by which it is sought to keep a triangular roof, and to drop the water in the defendants' house to the west, to be unjust for the following reasons :

First. From the evidence of the witnesses heard in this court, as well as before the ameen and peshkar, who severally conducted local enquiries, it is apparent that the wall of plaintiffs' house has always been much higher than that of defendant; but upon the plaintiffs' having raised it a little higher by placing some fresh mud upon it, the magistrate, at the instance of the defendant, ordered it to be broken down. Whereas plaintiffs' wall has always been higher than defendants, I do not see how they can fairly be prevented from continuing it higher. I therefore conceive so much of the magistrate's order as directs its demolition, to be incorrect.

Second. From the reports of the ameen, the peshkar, and the nazir of this court, it is obvious that the plaintiffs have always had a roof standing on two sides, and not a triangular one, before the present dispute arose. Plaintiffs were not justified, therefore, in exchanging their former roof for a triangular one, nor even in dropping the water from the eaves of their house upon the defendant's habitation to the west. That portion of the order of the magistrate, which disallows this, is certainly just. I therefore decree in favor of plaintiffs, and amend the order of the magistrate so far that the plaintiffs be at liberty to keep their wall up to the height to which they had raised it; but that, in pursuance of the same order, they remove their triangular roof, and cease from dropping the water from the eaves of their house on the defendant's house, to the west. Defendant will bear his own costs, and defray half of those incurred by plaintiffs, with interest to the date of final payment."

The plaintiffs (appellants) appeal against the orders for the removal of a triangular roof from a portion of their house, and for the continuance of the right to drop the water on the chopper of the respondent, a privilege for which they plead prescription.

The judgment of the lower court is in accordance with the evidence adduced, and, seeing no reason to dissent therefrom, I uphold the same, and dismiss the appeal with costs.

THE 12TH JULY 1848.

No. 109 of 1848.

Appeal from the decision of Mr. A. Almeida, Additional Moonsiff of Arrah, dated 30th March 1848.

Nursing Narain, himself and guardian of Joysing Narain, sons of Soomrun Sing, (Defendant,) Appellant,

versus

Pertab Sing, Khurrugjeet Sing, and Beekurmajeet Sing,
(Plaintiffs,) Respondents.

THIS appeal, and that instituted under No. 111, are both from the same decision of the additional moonsiff, dated the 30th March 1848.

The defendant, appellant, is dissatisfied that the wall of the respondent should be allowed to overtop his, stating that both have always been of the same height; and that their present unequal position is calculated to inconvenience him in no slight degree.

The judgment of the lower court is in accordance with the evidence adduced, and, seeing no reason to dissent therefrom, I affirm the same, and dismiss the appeal with costs.

THE 13TH JULY 1848.

No. 118 of 1848.

Appeal from the decision of Mr. A. Almeida, Additional Moonsiff of Arrah, dated 8th April 1848.

Sheikh Muneeroodeen Mahomed, (Plaintiff,) Appellant,

versus

Meer Imdad Ally, (Defendant,) Respondent.

THE additional moonsiff draws up this case in the following words:

“ Claim, possession of a small patch of land, &c.

Plaintiff sues for possession of a piece of land $27\frac{1}{2}$ cubits in length, from east to west, and $1\frac{1}{2}$ cubits in breadth from north to south, as well as for the demolition of a wall and a chabootra, also for the closure of three doors in a line, another great door being the entrance to the house, and two windows, valuing his suit at rs. 15.

Syud Imdad Ally, defendant, answers that the value of the causes of litigation is rs. 200, and that the door, &c. prepared by him, are all within their former limits.

The other defendants plead irresponsibility.

JUDGMENT.

I hold the plaintiff's action to be inadmissible, for by the evidence of the individuals examined by the nazir in the course of the local enquiry conducted by him, as well as by his own statement taken to-day, the subjects of litigation clearly appear to be worth rs. 100. Plaintiff has produced no proofs to establish the accuracy of his valuation at rs. 15, on the contrary, upon Imdad Ally, the defendant, having objected to it in answer, he persisted in it in his reply. Whereas the valuation of articles worth rs. 100, at merely 15, and the institution of the plaint on one rupee's stamp paper, when a paper of 8 rs. value was required, is opposed to Regulation X. of 1829, I nonsuit this case, with all legal expences incurred by the defendants, charged to plaintiff, with interest to the day of final liquidation."

The appellant affirms that the small parcel of land, &c., for which he sued, could well be covered by rupees 15, the amount at which his action was laid; consequently that his case was not liable to nonsuit, on the score of insufficient valuation.

From the enquiries held by the lower court it appears that the value of this suit has been underrated in the proportion of more than 10 per cent, consequently the order of nonsuit was perfectly correct. I therefore uphold the decision of the additional moonsiff, and dismiss the appeal with costs.

THE 14TH JULY 1848.

No. 126 of 1848.

Appeal from the decision of Mr. A. Almeida, Additional Moonsiff of Arrah, dated 22d April 1848.

Nack Roy and Gokool Roy, (Defendants,) Appellants,

versus

Belatee Pathuk, (Plaintiff,) Respondent.

THE additional moonsiff draws up this case in the following words:

"Claim, rupees 56-11½. Bond debt.

Plaintiff sues for the above sum, being principal and interest of a debt due agreeably to a bond, dated the 5th Jeit 1253 F. S., or 16th May 1846.

Defendants deny the debt and the bond, and allege that plaintiff has prosecuted them merely from a grudge that he owes them.

JUDGMENT.

I conceive the plaintiff's claim to be satisfactorily proved; for, from the evidence of the witnesses produced by him, it is established beyond a doubt that defendants, having borrowed the sum of

rupees 49 from plaintiff, executed a bond in his favor for that amount on the 5th Jeit 1253 F. S. The bare denial with which this action is met by the defendants, can be of no avail to them, in the absence of proofs. I therefore decree in favor of plaintiff the entire claim, together with costs of suit, and interest upon the principal from the date of action to the day of decision, with further interest upon the aggregate of that sum and the legal expences to the date of full recovery."

Defendants (appellants) positively deny the bond, and impute malicious motives to the respondent, in having originated it solely with a view to harass the appellants.

The bond is fully proved; and I do not see how the lower court could give any other judgment than a decree, which is hereby confirmed, and the appeal dismissed with costs.

THE 15TH JULY 1848.

No. 128 of 1848.

Appeal from the decision of Mr. A. Alneida, Additional Moonsiff of Arrah, dated 20th April 1848.

Mungur, (one of the Defendants,) Appellant,

versus

Dianut Ally, (Plaintiff,) Respondent.

THE additional moonsiff draws up this case in the following words:

"Claim, rupees 298-10-8. Bond debt.

Plaintiff sues for the above sum, agreeably to a bond executed in his favor, by Chaund, Mungur, and Geanee, on the 28th August 1831, the former of whom, having since deceased, has been succeeded by the two latter.

Mungur defendant denies having borrowed any money, and asserts that, not having inherited the estate of Chaund, he cannot be responsible for his debts,

Geanee has made no answer.

JUDGMENT.

I consider the plaintiff's claim to be proved against Mungur, for the following reasons:

First.—The evidence of the plaintiff's witnesses clearly shows that Chaund and Mungur, having borrowed the sum of rupees 275 from plaintiff on the 28th August 1831, executed a bond in his favor on the same date, Geanee being a minor at the time.

Second.—Although Mungur disclaims the debt, yet the authenticity of the bond having been fully established, and himself being a debtor as well as an heir of Chaund the joint debtor, he cannot escape liability for the action.

Third.—Geanee, one of the defendants, appears from the testimony of the plaintiff's witnesses, to have been a sucking child at the time the bond was executed; and a period of only sixteen years having since elapsed, he is yet a minor by Section 2, Regulation XXVI. of 1793, and consequently cannot be legally answerable for the debt.

Fourth.—The law of limitations does not affect this case, for the debt was engaged to be refunded in the year 1243 F. S., from which time to the 5th Phalgun 1254 F. S., when the suit was instituted, twelve years had not elapsed.

Fifth.—Neither can the validity of the present bond be vitiated from the circumstance of a minor being a party to it, suffice it that he be exonerated from liability.

Sixth.—There is no contradiction between the deposition of the plaintiff's witnesses and the wording of the bond, as argued by the defendants' counsel, who plead that, while the witnesses depose that the money was borrowed by defendants to pay their other creditors, the bond recites that the money was merely borrowed. That the defendants contracted a loan cannot be doubted; but whether it was to re-pay their other debts, or intended for other purposes, they are either way the plaintiff's debtors.

Seventh.—I can attach no credit to the evidence of the defendants' witnesses, relative to Mungur's having built the house in which he resided some ten years ago, for the defendant himself asserts being now only twenty-three years old; and as he must have been a minor ten years back, it is unlikely that the idea of building a house could have occurred to him during his minority.

Under these circumstances, exonerating Geanee, the defendant, from liability, I decree the entire claim, together with costs of suit, and interest upon the principal from the date of action to the day of decision, with further interest upon the aggregate of that sum and the legal expences to the day of final recovery, in favor of plaintiff, against Mungur, one of the defendants alone."

Appellant pleads that, being a minor at the time when the bond is alleged to have been executed, it is improbable that he could have been a party to it; and that the prescribed period of twelve years must be reckoned from the date of the bond, and not from the time the debt became due, as assumed by the moonsiff.

This latter position is quite untenable, and the 4th clause of the moonsiff's judgment which disposes of it, is perfectly correct.

The evidence adduced on both sides relative to the age of Mungur, at the time the deed was written, is very conflicting; but on the whole, I put more faith in that which shows him to have attained his majority before the year 1831.

The bewusteh of the divisional pundit also clearly shows that a son (Mungur) must pay the debts of his father (Chaund,) whether there be assets or not. I therefore uphold the judgment of the lower court, and dismiss the appeal with costs.

THE 17TH JULY 1848.

No. 129 of 1848.

Appeal from the decision of Mr. A. Almeida, Additional Moonsiff of Arrah, dated 22d April 1848.

Syed Ghalib Ally, Syed Ameer Ally, and Musst. Ohcedoon,
(Plaintiffs,) Appellants, .

versus

Sheo Gholam and Busty, (Defendants,) Respondents.

THE additional moonsiff draws up this case in the following words :

“ Claim, rupees 9-7½. Arrears of rent.

Plaintiffs sue for the above sum, being the revenue due agreeably to the putwarry's wasilbakee from the year 1252 to 1254 F. S., for a cultivation of 4 beegahs, 19 cottahs held by defendants, in mouzah Pout Pingreawan and Pout Saloo, talooka Bussuntpoor, pergunnah Arrah, of which plaintiffs are shareholders to the extent of 2¼ annas.

Jinwur Lall, defendant, denies having cultivated the above parcel of land, alleging that Moheet Roy and the relict of Bishenath Gwalla cultivated it in the year 1252 F. S., Moheet Roy, Musst. Bootto, and the other maliks, in 1253 F. S., and Jug Sahawun Roy, in 1254 F. S.

JUDGMENT.

In my opinion the plaintiff has failed to prove his claim. For it is not apparent from the evidence of any document filed by the plaintiff, nor from the deposition of any of his witnesses, that defendants ever cultivated the land for the rent of which they are prosecuted. On the contrary, from the local investigation conducted by the ameen, against which there is no objection from any party, it is evident that Moheet Roy and the widow of Bishenath cultivated it in the year 1252 F. S., Moheet Roy, Musst. Bootto, and the other maliks, in 1253 F. S., and Jug Sahawun Roy alone in 1254 F. S. Thus defendants cannot be held responsible for the revenue of lands which it is not proved that they ever cultivated. I therefore dismiss this case, with all legal expences incurred by defendants chargeable to plaintiffs, with interest to the date of final payment.”

In appeal, it is insisted that the respondents, whose names are recorded in the putwarry's papers, are the actual cultivators, and

not the individuals named as such by the moonsiff in his decree, from whom the appellants never realized any amount of revenue.

The judgment of the lower court is in entire accordance with the facts adduced. I have nothing left me therefore but to confirm the same, and dismiss the appeal with costs.

THE 18TH JULY 1848.

No. 135 of 1848.

Appeal from the decision of Mr. A. Almeida, Additional Moonsiff of Arrah, dated 27th April 1848.

Muddut Ally, (Plaintiff,) Appellant,
versus

Muzhur Ally and Abid Ally, (Defendants,) Respondents.

THE additional moonsiff draws up this case in the following words :

“ Claim, rupees 46-6, value of bricks.

Plaintiff sues for the above sum, agreeably to a daily account, being the balance (principal with interest) of the value of 69,800 bricks, purchased by defendants at the rate of 1 rupee per thousand, after deducting rupees 34 recovered from them.

Muzhur Ally, defendant, denies having purchased any bricks. Abid Ally defendant acknowledges having bought 29,800 good bricks at the rate of 1 rupee per thousand, and 10,000 of an inferior quality, at 12 annas per thousand, for the purpose of building the house of his uncle, Uzbur Ally, the value whereof, being rupees 37-5, he paid plaintiff, after having deducted rupee 1-5, as custom, and denies being in debt to plaintiff.

JUDGMENT.

In my opinion the plaintiff has failed to prove his claim for the following reasons :

First. Although the plaintiff's witnesses depose that the defendants bought 69,800 bricks, which were supplied at five or six different times, yet they are ignorant of the quantity of bricks taken each time, and no account having been made of the total number of bricks sold, their evidence cannot be relied upon. Abid Ally, the defendant, admits having bought 39,000 bricks, and it is probable that the plaintiff's witnesses were present at the purchase of these and allude to them in their depositions.

Second. The account filed by plaintiff cannot be depended upon, for it does not bear the signature of even one of the two defendants; nor upon a close examination of the letters, does it seem to have been written on various dates, as deposed by the plaintiff's witnesses, but bears every appearance of having been all inscribed on one date.

Third. The testimony of the witnesses of Abid Ally clearly demonstrates that he bought 39,800 bricks to build the house of his uncle, Uzhur Ally, and paid the value rupees 36, after deducting rupee 1-5 annas as custom. Thus the claim of the plaintiff is entirely unfounded. I therefore dismiss it, charging him with all the expences incurred by defendants, with interest up to the date of final payment."

The appellant alleges that, having proved his case by oral testimony, the mere absence of respondents' signature to the account filed was not a legitimate ground for the dismissal of his claim.

The evidence adduced by the plaintiff is, in my opinion, evidently tutored and untrustworthy. The account filed by him, in support of his claim, is unquestionably written on the same date, and therefore manufactured for the occasion, and not a particle of proof has been put in to verify the writing.

The additional moonsiff therefore was quite right in dismissing the case, which judgment I accordingly affirm, and reject the appeal with costs.

THE 19TH JULY 1848.

No. 137 of 1848.

Appeal from the decision of Mr. A. Almeida, Additional Moonsiff of Arrah, dated 29th April 1848.

Puttee Gwalla, (Defendant,) Appellant,
versus

Gungabishoon and seven others, (Plaintiffs,) Respondents.

THE additional moonsiff draws up this case in the following words :

"Claim, rupees 46-8. Arrears of rent.

Plaintiffs sue for the above sum, being balance of revenue due from defendant for the year 1253 F. S., agreeably to the putwarry's wasilbakee, for a cultivation of 39 beegahs 13¼ cottahs held by him at the rates of rupees 2, 1-8, 1, and 4 per beegah, in mouzah Rampoor Ghogun, pergunnah Burrahgowa, of which plaintiffs are proprietors of 12 annas, 12½ daums,—the rent demanded being proportionate to their interest in the estate.

Defendant acknowledges holding the tenement, and alleges that in excess of his long standing cultivation, he took 5 beegahs, 11 cottahs of an alluvial formation, upon a bhowlee tenure up to 1253 F. S., which the plaintiffs have stated to be 11 beegahs, 9¼ cottahs, bearing a rate of 4, and that he has paid the revenue in full.

JUDGMENT.

I consider the plaintiffs to have proved their claim for a modified sum for the following reasons.

First. The evidence of the plaintiffs' witnesses fully establishes that the wasilbakee, upon which this claim is based, was drawn

up in the presence of the defendants, and a balance of rupees 40-13-7½ was struck against him for the year 1253 F. S.

Second. The local investigation, conducted by the ameen, indicates that, exclusive of other lands, defendant cultivated in 1253 F. S., 8 beegahs, 11 cottahs, 6 dhoors of land, acquired by alluvion. Although Jewlall, the defendant's father, executed a kubooleut for the same parcel at 11 beegahs, yet I hold the defendant only liable for the rent of the area found by measurement. Neither can 3 beegahs, 6 cottahs, 16 dhoors, claimed by the objectors, be deducted from it; for the ameen reports the whole of the measured land to have been in the occupation of the defendant in the year 1253 F. S., who must be responsible for the revenue of that year.

Third. If the objectors are actually cultivators of the land claimed by them, they are at liberty to keep possession of it. The plaintiffs, however, are entitled to the revenue demanded by them, being rupees 29-3, principal, and rupees 3-8, interest, total rupees 32-11 for 11 beegahs 9¼ of alluvial land, *minus* 2 beegahs 18 cottahs found deficient by measurement. Upon these considerations I decree in favor of plaintiffs the sum of rupees 32-11, together with costs of suit, and interest upon the principal from the date of action to the day of decision, with further interest upon the aggregate of that sum and the legal expences to the day of final recovery."

The appellant denies ever having assented to the wasilbakce, affirming that the kubooleut for the alluvial land was tendered by his father; that he cultivated only 5 beegahs 11 biswas of it, which by the ameen's measurement turned out beegahs 8-11-6, upon a portion of the holding of a neighbouring ryot having been included as his; and that he held the land under a bhowlee tenure, and not at 4 rupees per beegah, at which rate the moonsiff has passed the decree.

The kubooleut, the oral testimony, and the local investigation, all bear evidence to the correctness of the judgment of the lower court, which is hereby affirmed, and the appeal dismissed with costs.

THE 20TH JULY 1848.

No. 153 of 1848.

Appeal from the decision of Mr. A. Almeida, Additional Moonsiff of Arrah, dated 15th May 1848.

Ram Puhul Sing and three others, (Plaintiffs,) Appellants,
versus

Sheikh Mahomed Kurreem and three others, (Defendants,) Respondents.

THE additional moonsiff draws up this case in the following words:

“ Claim, rupees 7-8, part value of some tar trees.

Plaintiffs claim the above sum, being a moiety of the value of six tar trees, comprised in mouzah Surroudha, pergunnah Arrah, stating that, having been planted by their ancestors, they possessed a ryotty interest in the trees, but that defendants cut these without allowing plaintiffs their half share of the value.

Defendants answer that the trees grew wild in the jungles of mouzah Surrouda, and were not planted by the plaintiffs' ancestors.

JUDGMENT.

I am of opinion that the plaintiffs' claim is untrue, for the following reasons:

First. From the reports of Rajkoomar and Purmeshurree ameens, and the depositions of 21 individuals taken by them, exclusive of those who were examined in this court, it is decidedly proved that the “ tars” in the jungles of Surroudha, pergunnah Arrah, among which are those under litigation, are of wild growth.

Second. Plaintiffs' assertions, concerning the tar trees having been planted by their ancestors, cannot be credited, for they have not produced any pottah from the owner of the soil authorizing them to plant the trees, nor is it evident from the plaint how many trees were planted, in what portion of land, and upon what conditions. It is also incredible that a proprietor will permit another to plant trees in his grounds, without first coming to an arrangement, and the planter himself be ignorant of the number of trees planted by him. On the contrary the most likely inference is, that the trees in question, like all other found in the forests, are self grown. The report of Jankee Pershad, in support of the plaintiffs' claim cannot therefore be depended upon, neither can the decree of the principal sudder ameen, dated the 10th June 1844, filed by the plaintiffs, but in which the parties to this suit are not concerned, be available in this case. I therefore dismiss this suit with all legal expences incurred by defendants chargeable to the plaintiffs, with interest to the date of final payment.”

The appellants urge that the trees are not self grown, but were planted by them and their ancestors, and refer to a decision of the principal sudder ameen of the 10th June 1844, confirmatory of the same.

An enormous mass of evidence was taken in this case, which is, as usual, sadly conflicting. The plaintiffs, however, have not established to my satisfaction that the trees (the value of which they now claim) were either planted by themselves or their ancestors; and the local investigations conducted by three different ameens, incline me to believe rather that they were jungle, and self grown. The judgment of the principal sudder ameen of the 10th June 1844, has nothing whatever to do with the decision of the case now *sub lite*. In that suit a former moonsiff decided one

way, and the principal sudder ameen in another, on a matter of fact; but in the present case, the additional moonsiff was perfectly justified in exercising his own discretion in weighing the evidence adduced before himself.

His judgment is, in my opinion, quite correct, and I accordingly affirm the same, and dismiss the appeal with costs.

THE 21ST JULY 1848.

Case No. 23 of 1847.

Appeal from the decision of Syed Munour Ally, Principal Sudder Ameen, dated 17th May 1847.

Bhyro Panday and Buktour Panday, (Defendants,) Appellants,
versus

Baboo Kour Sing, (Plaintiff,) Respondent.

THIS suit was instituted by the plaintiff (respondent) on the 27th November 1845, for the recovery of rupees 4,814-8-1, being principal and interest of the rent due from defendants at *bhowlee* rates, from the year 1248 to 1252, for a third share held by him in 233 beegahs, 10 biswas of land, situated in mouzah Buhoram-poor, pergunnah Beecheeah.

The particulars of this case, as recorded by Mr. W. St. Quintin, will be found in detail at pages 4, 5, and 6, of the printed Decisions of this zillah for February 1847.

The judgment of that officer, remanding the case for re-trial, is as follows :

“These lands in dispute are allowed by both parties to be situated in the district of Ghazee-poor, and to have been the subject of litigation between these parties in the court of that district. On the 15th April 1846, just one month after the appellant filed his first reply in the suit, he gave in a petition, denying the jurisdiction of the court of this district, and declaring that the grounds of this action had been investigated and disposed of in the court of Ghazee-poor. This petition and the point alluded to in it are not noticed in the decrec of the principal sudder ameen, nor does he give any reason for making Buktour Panday responsible. The only evidence that I can find against him is that Bhyro Panday is his servant : if therefore on this plea Buktour Panday is liable, the same plea would also implicate the rajah, because Buktour Panday appears to be the servant of the rajah. I therefore reverse this decree, and return the case for re-investigation with reference to the above remarks, and the usual order is passed for a refund of the value of the stampd paper to the appellant.”

The principal sudder ameen has again adhered to his former decision, relying upon the evidence of the putwarree and other witnesses, and upon certain documents enumerated in his decree

as giving him jurisdiction. Buktour Panday was also made jointly responsible with Bhyro Panday, on account of his being proved to be the principal cultivator, whilst the latter was only his underling.

The question of jurisdiction is the chief point dwelt on in this second appeal preferred by the defendants.

I am of opinion, that the judgment of the principal sudder ameen is incorrect for the following reasons :

First. Suits for rent of land should be instituted in the zillah where the land is situated, *vide* case of Gopeekunt Misser, decided by the Sudder Court, on the 19th February 1848, to be found at page 138 of the *Agra Government Gazette* for that year.

Now the lands (the reht of which forms the present claim) unquestionably lie in the district of 'Ghazeepoor,' and have been the subject of frequent litigation in the several courts of that district. It is difficult therefore to understand how the principal sudder ameen should, in the face of these proceedings, still persist that he has jurisdiction in the case now *sub lite*.

Secondly. It was contended by counsel, that because the bulk of mouzah Buhorampoor (not in dispute, be it remarked) lay on this side of the Ganges, and because the revenue of the village was paid into the Shahabad treasury, that the suit therefore was cognizable in this district. This argument, however, is opposed both to the spirit and principle of Construction No. 969, and is perfectly untenable.

Had the greater part of the land (the rents of which form the cause of action) been situated in this zillah, then indisputably the case might have been tried in Shahabad after permission duly obtained; but, as shown above, these lands (the rent of which is now claimed) are situated entirely in the Ghazeepoor district, and consequently a suit for the same cannot lie in the Shahabad courts. I therefore reverse the decision of the principal sudder ameen, and nonsuit the plaintiff with all costs of court.

I think it right to add that the respondent claimed eventually to have his suit transferred to zillah Ghazeepoor, under the precedent of the Sudder Dewanny Adawlut above alluded to; but as his action in the principal sudder ameen's court of this zillah was wilful and premeditated, and so directly at variance with

* Principal sudder ameen of Ghazeepoor, dated 18th May 1843.

Sudder Dewanny Adawlut, Western Provinces, dated 16th December 1844.

Judge of Ghazeepoor, dated 25th June 1845.

Sudder ameen of Ghazeepoor, dated 29th May 1847.

what he must have known was the proper course to pursue, as indicated by the proceedings noted in the margin,* disposing of the many litigations connected with this very land, I thought it but just to the opposite party to reject

this claim and to nonsuit him with costs.

THE 22^D JULY 1848.

Case No. 38 of 1848.

Appeal from the decision of Syed Munow Ally, Principal Sudder Ameen, dated 30th August 1847.

Thakoor Dass and Choonee Lall, (Plaintiffs,) Appellants,
versus

Syed Mahomed Tukee Khan and Musst. Syedoonnissa Begum,
 (Defendants,) Respondents.

THIS suit was instituted by the plaintiffs (appellants) on the 26th January 1847, in order to obtain the annulment of a deed of gift executed by Syed Mahomed Tukee Khan, in favor of his wife, Syedoonnissa Begum, on the 24th April 1844, bestowing on her his rights and interests in monzali Kawat and some other lands attached thereto. Plaintiffs urge that this gift is entirely a fictitious one, being a ruse on the part of Tukee Khan to evade the execution of decreed claims against him, on account of which the property above-mentioned was under advertisement for sale, but which was not brought to the hammer in consequence of the female having preferred objections based upon this deed of gift, and having succeeded in summarily establishing her occupancy.

Defendants answer that the deed of gift alluded to is a genuine instrument, and that Musst. Syedoonnissa Begum has been in possession agreeably thereto.

The principal sudder ameen dismissed this case on the 10th August 1847, upon the ground of the gift in question being an honest transfer, which was consummated by the possession of the donee, in the absence of any legal impediment to it.

In appeal it is urged that the attachment of monzali Kawat, on account of the appellants' decrees, never having been withdrawn, Mahomed Tukee Khan had no right whatever to alienate the property; that the transaction is undoubtedly collusive, being designed to defraud the appellants of their just rights and decreed claims.

I am of opinion that this deed of gift is obviously fictitious with the view to defraud the appellants, the donor and donee being husband and wife. It is clearly shown that the property in dispute was advertised for sale in execution of decrees against Mahomed Tukee Khan, previous to this questionable transfer, which leaves no doubt of the fraudulent nature of the transaction. I am therefore of opinion that this hibbeh-namch should be declared null and void, and the property liable, to sale in execution of decrees against Mahomed Tukee Khan.

With this view of the case I admitted the appeal on the 23d May, and now, in the presence of respondent, I reverse the decision of the principal sudder ameen, and decree as above recited, making all costs payable by defendants.

THE 25TH JULY 1848.

Case No. 47 of 1847.

Appeal from the decision of Syed Munour Ally, Principal Sudder Ameen, dated 24th September 1845.

Madho Singh and Murjad Singh, (Defendants,) Appellants,
versus

Maharaja Ishwuree Persad Narain Singh, (Plaintiff,) Respondent.

THE particular of this case are thus given by the presiding judge of the Sudder Court in remanding it, for re-trial, on the 21st February 1848 :

“The petitioner, plaintiff in this case, sued to recover possession of certain lands, (which he alleged had been sold to his father, on 21st December 1832, by Teluk Singh, Murjad Singh, Madho Singh, and Gunesb Sham Singh,) stating that, although Murjad Singh’s signature was not affixed to the deed of sale, he had subsequently given his assent, and, in confirmation of this had signed, jointly with the other three sellers, a receipt for 10,000 rupees, paid in advance to bind the bargain.

The principal sudder ameen decreed for the plaintiff, deeming the fact of Murjad Singh having signed the receipt as good evidence of his consent to the sale. In appeal, the acting judge reversed the principal sudder ameen’s decision, recording his opinion that the bill of sale was a forgery, and assigned as one reason for thinking so, that it had not been produced in the foudjaree court, when a case under Regulation XV. 1824, for the possession of the lands, was under enquiry, and remarking ‘where then can it have come from now?’ He also objected to the validity of the document for want of Murjad Singh’s signature. But, from the proceedings held in appeal, on the suit in the foudjaree under Regulation XV. 1824, it is beyond dispute the document was filed; and the acting judge makes no mention whatever of the principal sudder ameen’s argument, regarding the effect of Murjad Singh’s signature to the receipt in curing the omission to sign the deed of sale.

It is evident that a due consideration of these two facts may cause an alteration of the acting judge’s opinion as to the document, and that, without such consideration, his decision is incomplete. Ordered, therefore, that the proceedings be remanded for revision on these points.”

The judgment of Mr. W. St. Quintin is as follows :

“In this case the point to be decided is the validity of the *suttah*, or deed of sale.

I differ with the principal sudder ameen in his finding in this case as I consider the document of sale to be invalid, because it does not contain the signature of all the sellers. The plaintiff

(respondent) claims this property as a purchase of his father's Oditnarain's from Madhoo Singh, Murjad Singh, Teluk Singh, and Gunesh Sham Singh, and the document he puts in as proof of this is not signed by Murjad Singh.

In the criminal court, when this dispute was introduced under Act IV. of 1840, or rather under Regulation XV. of 1824, the plaintiff was asked under what deed he claimed possession? he replied that the deed had been stolen; then, whence comes the suddah now produced? besides there is evidence to show that the share of one of these sellers, viz. Teluk Singh, had become the property of Seetuldharee Singh, by mortgage.

For the above reasons I consider the deed invalid and decree for the appellant, saddling all costs on respondent."

After due consideration, I am of opinion that the decision of the principal sudder ameen is incorrect, and must be reversed for the following reasons.

First. The suddah or deed on which the plaintiffs' claim is founded, is dated the 21st December 1832, but the suit is not brought forward until the 14th December 1844!! a period wanting only seven days more to run, to bar its institution *in toto*, a point pregnant with suspicion.

Secondly. It is not an out and out kubaleh on a fifty rupees stamp, but a half and half affair called a suddah, on an eight rupees stamp, under which the plaintiff seeks to recover property valued at 16,000 rupees.

Thirdly. This suddah was neither attested by the local cazee nor registered by the register of deeds.

Fourthly. The signature of Murjad Singh, one of the reputed sellers, is not affixed to the deed.

Fifthly. Out of six subscribing witnesses to the deed, all, be it remarked, residents of different villages, the evidence of two only is adduced; one taken at Benares by commission, so that cross-examination was impossible, the other here; the testimony of both also, it is to be observed, was recorded upwards of 12½ years after the date of the deed, and yet these witnesses speak to the transaction with such an absurd, such an uncalled for minuteness of detail, as to show very clearly that the whole is tutored and utterly worthless.

Sixthly. This suddah was not produced before the magistrate in a case of plunder then before that court in September 1834; and in answer to a question put by the commissioner of the division in appeal, on the 12th December following, it was distinctly affirmed by the rajah's accredited agent that this suddah had been plundered with the rest of the property, and was not forthcoming!! True, it was filed in the foudjaree in the Regulation XV. of 1824 case, on the 10th May 1836, but this merely tends to show that it was manufactured between those two periods.

Thus much for the *suttah*, and now for the receipt of 1,000 rupees, dated the 11th January 1833, paid in advance to bind the bargain, said to have been signed by Murjad jointly with the other three sellers, (*vide* paragraph 1, of the *Sudder* report at the commencement of this narrative.) This document is also totally unworthy of credit, in my opinion, for the following reasons :

Firstly. The stamp is of higher value than was necessary.

Secondly. The signature of Murjad Singh is not to this hour to be found upon the 1,000 rupees receipt, as falsely asserted by the plaintiff.

Thirdly. The signature of Teluk Singh, though stated to be present at the time, is not written by himself on the receipt, although on the *suttah* a name, purporting to be his, is said to have been written by himself.

Fourthly. The signatures of Gunsham and Madho on the receipt are quite different from those to be found on the *suttah* !!!

Fifthly. Out of four subscribing witnesses to this receipt, all residents of different villages, the evidence of two only is adduced ; one taken by commission, thus again defeating cross examination, the other becoming a witness from the old hacknied excuse of having accidentally dropped in to pay his *malgoozaree* at the time ; and both recorded 12½ years after the occurrence, to which they testify with the freshness of yesterday.

Having now disposed of the 1,000 rupees receipt, which is shown not to bear Murjad Singh's name at all, I proceed to consider what effect his signature on another receipt for rupees 508-6-1, dated the 27th March 1833, will have in curing the omission to sign the deed of sale.

From the history I have given of the *suttah* and 1,000 rupees receipt, I need scarcely say that an incidental allusion to this property being the *rajah's*, even supposing the receipt of March 1833 to be of unquestionable validity, and to be the *bond-fide* act and deed of Murjad Singh, can have no effect in imparting genuineness to documents of undoubted spuriousness ; but I have my doubts even as to the character of this latter receipt for rupees 508, 6 annas, 1 pie.

The money, be it remarked, had nothing whatever to do with the case now *sub lite* and the receipt itself, to say the least of it, was unskilfully drawn. It starts off with "I, Murjad Singh, the *malik* and *hissadar* of so and so, and so and so." Now if he really sold this identical property in December 1832, it is difficult to understand how the *rajah* allowed him still to record himself as co-parcener of the same in March 1833.

Admitting, however, for argument that this receipt is unimpeachable, it still cuts both ways and makes as much for Murjad Singh's retention of proprietary right in the lands, as does the

incidental allusion further on for that of the rajah, and there I leave it.

I have no doubt whatever in my mind that the case is a fraudulent one on the part of the rajah, supported by nothing better than forgery and perjury, and I accordingly reverse the principal sudder ameen's decision, and dismiss the plaintiff's suit with all costs of court.

THE 25TH JULY 1848.

Case No. 49 of 1846.

Appeal from the decision of Syed Munour Ally, Principal Sudder Ameen, dated 27th September 1845.

Subuldan Singh, (Defendant,) Appellant,

versus

Maharaja Ishwuree Pershad Narain Singh, (Plaintiff,) Respondent.

THIS case is connected with No. 47, this day decided, and on the same grounds I decree for appellant. A copy of my judgment in that case will suffice for this.

ZILLAH SYLHET.

PRESENT: H. STAINFORTH, ESQ., JUDGE.

THE 14TH JULY 1848.

No. 159 of 1847.

Appeal from the decision of Moonshee Chytun Churrun Das, Moonsiff of Lushkerpore, dated the 23d July 1847.

Sheik Madhoo, Appellant,

versus

Ramnarain Shah, Respondent.

RESPONDENT sued appellant and eleven others for principal and interest, due under a bond for 50 rupees, executed by them on the 16th Magh 1252, and payable ninety days after date.

Appellant resisted the claim, denying the alleged transaction, and pleading that the persons sued, with the exception of the second person, bearing the name of Zumeer, were located by respondent, in 1253, on an estate purchased by him in his mother's name, as ryuts, on the understanding that they were to pay no rent, but were to perform such works as should be required of them; that their property was attached by Kurroona Mye and Brij Soonder, for rent of some land which they tenanted from these landholders; that respondent confined them, and caused them to institute a suit for replevin in order that he might obtain possession of the land; but that, as the claim of Kurroona Mye and Brij Soonder was just, they filed a deed of renunciation, paid their rent, and thus effected release of their property; that, finally, they quitted respondent's estate on account of his oppressive conduct, and that the present suit has been, in consequence, made up by respondent, whose character will be seen from inspection of suits, Nos. 511 and 191: and he added that no second person of the name of Zumeer was living in Lenjapara, and that Alum, Unsur, and Paposhee have gone no one knows whither.

The moonsiff (Baboo Chytun Churrun Das) held this claim proved, observing that, though the persons sued lived near his court, appellant was the only one who had thought it worth while to appear; that though appellant denied the transaction, which is the subject of the suit, and alleged some of the persons who are stated to have joined in it to have been absent previously to its institution, still the subscribing witnesses to the bond, who are persons of respectability, have proved its execution; and the

transaction which it represents ; and on these grounds, discrediting the evidence of three witnesses adduced by appellant to prove the absence of some of the persons sued, he decreed the claim in full.

Appellant now repeats his former pleas, and urges that he, Unsur, Alum, Paposhce, Zumeer, and others, in all 12 persons, have been sued as residing in mouzah Lenjapara, but that no persons bearing the names mentioned live in that village ; that Zumeer is a minor ; that the subscribing witnesses to the bond are the servants of respondent, and under his influence ; that notices have not been served at the houses of the other persons sued, wherefore they are not cognizant of the suit ; that the moonsiff has not duly weighed respondent's fraud ; that the persons who have sworn to service of the notices are respondent's servants, hacknied witnesses in numerous cases, who, had the moonsiff made enquiries in mouzah Lenjapara, would have been convicted of perjury.

JUDGMENT.

Notice of this suit is not proved to have been served as is required by Section 22, Regulation XXIII. of 1814, and it is consequently necessary to remand it,

IT IS THEREFORE ORDERED,

That the decree of the moonsiff be reversed ; that the suit be remanded ; that the value of the stamp of the petition of appeal be refunded ; and that the other costs of this appeal be provided for in the future decree of the moonsiff.

THE 14TH JULY 1848.

No. 175 of 1847.

Appeal from the decision of Baboo Sharodapershad Ghose, Moonsiff of Ajmercegunge, dated 21st August 1817.

Manikram Deb, Appellant,

versus

Jeoda Dasee and others, Respondents.

APPELLANT sued Jeoda Dasee, Brijgobind, and Shunkeree Dasee, heirs of the late Shudye Gobind Deb, and Rajceblochun Deb, as colluding with them, claiming to recover under a bond for Sicca rupees 25, executed by the said Shudye Gobind Deb, on the 28th of Aghun 1242 B. S.

Jeoda Dasee, widow of Shudye Gobind Deb, denied that her late husband had executed the bond in suit, and pleaded that he was not in need of such a sum as that represented in it, but had one or two hundred rupees in hand ; that appellant had, at the

time of the date of the bond, instituted a suit as a pauper, and sworn that he possessed no property ; and that this suit is instituted in consequence of the social intercourse of the parties having been interrupted.

Brij Gobind, the brother of Shudye Gobind, pleaded that he had never heard of the transaction ; that the suit was instituted from motives of enmity, in order to ruin him ; and that he was not in possession, or entitled to any part of his late brother's estate.

Shunkuree Dasee refers in her answer, to the answer of Brij Gobind.

Rajeeblochun repudiates collusion.

The moonsiff, Baboo Sharoda Pershad, observed, that though the bond filed on the part of appellant, and the evidence of two witnesses named on it, set forth that Shudye Gobind had executed the bond in consideration of the receipt of 25 rupees, still two of the witnesses had deposed to appellant's suing *in forma pauperis* ten, eleven, or twelve years ago, shewing that he had so sued in the year of the alleged loan, or the year following ; and that under such circumstances, it was incumbent on him to shew that he had the means of advancing the loan ; but that, as he had not done so, it could not be believed that he, a pauper, had lent the money ; that, although Kallee Churrun, witness, had deposed to appellant's suing *in forma pauperis*, and thus obtaining money, he had not specified the year, month, date, and amount of realization ; that Ram Sherrun, witness, had deposed to the late Shudye Gobind having acted as a mooktar, a circumstance which rendered the alleged borrowing matter of doubt, which the witness had stated nothing to remove ; that at page 115 of some book cited, it is written that when a debtor dies, a mahajun should hasten to recover his claim, so that appellant should have shewn when his debtor died, and how soon afterwards he sued, but had not done so, but had sued after lapse of a long time since the cause of suit ; that both the witnesses said that the debtor wrote his own name on the bond, and Calleechurrun further stated that he wrote the bond itself, but that the writing of the body of the bond and that of the debtor's signature were very different, while the bond appeared newly written : and on these grounds he dismissed the suit with costs.

Appellant now urges that he realized upwards of six hundred rupees in the suit preferred by him *in forma pauperis*, and that the sum lent under the bond in suit was part of it, and that Shudye Gobind died in 1247 or 1248 ; and that his vakeel inadvertently omitted to state the date of his demise ; but that, as respondents did not deny his death, the omission did not affect the claim, which is fully established ; and he adds that the bond and the debtor's signature are both in the handwriting of the debtor.

JUDGMENT.

I find, on reference to the collector, that appellant (who had sued *in forma pauperis* and obtained a decree) was paid from the collectorate the sum of 679 rupees, 2 annas, on the 4th Aghun 1242, that is to say, a few days previously to the date of the alleged loan on the 28th idem, so that he appears to have had ample funds for the transaction asserted. Further, the moonsiff's opinion that it is unlikely that Shudye Gobind would have borrowed as he was a mooktar, his observation that the book he quotes enjoins immediate recovery of dues on the death of a debtor, and his statement that the body of the deed and the signature of Shudye Gobind are not in the handwriting of one and the same person, as is declared by one of the witnesses, appear to me to have no weight; for mooktars are not excluded from the liberty, or all exempt from the necessity, of borrowing money, the law ordinarily allows 12 years for the institution of a claim, and the writing of the signature of Shudye Gobind and the body of the bond is, in my opinion, by one person; and, as the transaction asserted by appellant appears to me proved, and his claim against Jeoda Dasee, the widow and representative of Shudye Gobind, just,

IT IS ORDERED,

That the decree of the moonsiff be reversed, and that the claim be decreed, with interest, against Jeoda Dasee, who will pay her own and appellant's costs; the other surviving defendants, who live in family partnership with Jeoda Dasee, and have, notwithstanding, filed separate answers, will pay their own costs, while the costs of the late Rajeeblochun will be charged to appellant.

THE 15TH JULY 1848.

No. 211 of 1847.

*Appeal from the decision of Mahomed Salim, Moonsiff of Sonam-
gunge, dated 11th September 1847.*

Needceram Shah, Appellant,

versus

Sonaram Shah, Respondent.

RESPONDENT sued, on the 13th April 1847, for 15 rupees, the price of four bhootas of mustard, purchased from him on the 14th of Chyete 1252, and for which payment was to have been made in fifteen days.

Appellant denied the transaction *in toto*, alleged that the suit was instituted because he had preferred one against Heera Ram Shah, full brother of appellant and messing with him, for 4 rupees 8 annas, the price of ghee.

Respondent urged, in reply, that the two cases were unconnected.

The moonsiff (Moulvee Mahomed Salim) held the claim proved by the evidence of respondent's witnesses, observing, among other matter, that in appellant's suit against Heera Ram it appeared that he had transactions with respondent without execution of deeds, and he accordingly decreed in respondent's favor.

Appellant now urges that he never bought any mustard from respondent; that the suit is owing to his having instituted one against respondent's brother; that the witnesses adduced by respondent are persons of low rank; and that the local enquiry of the ameen, who was deputed to investigate the case, and the evidence of the neighbours and respondent's relations have not proved the claim.

JUDGMENT.

Under the circumstances of the suit against Heera Ram, respondent's brother, which was instituted on the 24th March 1847, I am unable to rely on the oral evidence which has been adduced by respondent, and which alone supports his claim,

IT IS THEREFORE ORDERED,

That the appeal be decreed, the decree of the moonsiff reversed, and the suit dismissed, with all costs payable by respondent.

THE 21st JULY 1848.

No. 213 of 1847.

*Appeal from the decision of Baboo Hergouree Bose, Moonsiff of
Russoolgunge, dated 24th September 1847.*

Mahomed Moneer, Appellant,
versus

. Sahebooddceen and others, Respondents.

THE particulars of this suit are recorded at page 103 of the Decisions of this court on the 19th June 1847, when it was remanded, on the appeal of the present respondents, for "further and thorough enquiry into the responsibility of all the persons sued," the moonsiff having passed a decree against Oomakant only, who was stated to be a pauper, and who appeared to be the tool of Mahomed Moneer, now appellant.

The moonsiff (Baboo Hergouree Bose) has now decreed against Mahomed Moneer, Oomakant, Koomede Ram, and Pran Ram, holding it proved that these persons had joined in extorting money from respondents, under a false claim of rent, and directing that they should pay the sum extorted, together with *twice* the amount as penalty, and the costs of suit.

Oomakant has preferred no appeal. Koomede Ram *alias* Koomakant, and Prankishen *alias* Pran Ram have appealed separately under appeal No. 222.

The grounds of appeal advanced by Mahomed Moneer are that the moonsiff has not investigated the case in the manner demanded by it; that he has not taken the evidence of the witnesses of respondents, named and left unexamined when the case was formerly before him, or taken the testimony of the remaining witnesses of appellant, but has put faith in the depositions of two new witnesses, whose statements contain discrepancies, and given a decree for thrice the sum alleged to have been extorted,—with other immaterial matter.

JUDGMENT.*

The attachment and payment of 46 rupees 11 annas, by respondents, for the release of their cattle, unjustly distrained, are proved and unquestioned facts, and all I have to decide in this appeal is, whether Mahomed Moneer was concerned in the extortion, and, if so, for what amount he is liable under the law.

Perusal of the evidence has fully satisfied me that appellant was concerned in the extortion. The moonsiff was not restricted in his enquiry as appellant asserts, and appellant, if he wished to produce additional witnesses, should have done so, but he appears to have taken no steps to this end. Under these circumstances I see no reason to interfere with that part of the decree of the moonsiff which renders him responsible, but deem it to require alteration in regard to the amount of penalty awarded, which under Section 6, Regulation XVII. of 1793, should be equal to the sum extorted.

IT IS THEREFORE ORDERED,

That the decree of the moonsiff be altered in regard to appellant and Oomakant by the penalty being reduced to a sum equal to the sum extorted. Respondents' costs and their own will be charged to appellant and Oomakant, while the responsibility of Koomakant and Prankishen will be considered separately.

THE 21ST JULY 1848.

No. 222 of 1847.

Appeal from the decision of Baboo Hergouree Bose, Moonsiff of Russoolgunge, dated 24th September 1847.

Koomakant and Prankishen, Appellants,
versus

Sahebooddeen and others, Respondents.

THESE appellants have appealed from a decree for recovery of money extorted, with penalty, passed against Mahomed Moneer,

Oomakant, and these appellants, which has been amended (see the preceding case) by reduction of the sum decreed.

The question now before me is whether these appellants were concerned in the extortion in which Mahomed Moneer and Oomakant were engaged or not. I have perused the evidence, and, finding that the complicity of these appellants is not satisfactorily established,

IT IS ORDERED,

That the appeal be decreed, that these appellants be released from responsibility, and that their costs be charged to respondents.

THE 22^D JULY 1848.

No. 230 of 1847.

Appeal from the decision of Moonshee Nuzecrooddeen Mahomed, Moonsiff of Parkool, dated 12th November 1847.

Ramnarain Das, Appellant,

versus

Gour Das, Respondent.

RESPONDENT sued for 85 rupees, 10 annas, 6 pie, *plus* 47 rupees, 1 anna, 10 pie, interest, in all 132 rupees, 12 annas, 4 pie, stating that when the rights and interest of Ramnarain in talooka Rajah Ram, &c. were under sale in execution of the decree of Ukra Misrahee and others, Hurreenarain, the elder brother of Ramnarain, sent his man, Kunhaye Deb, to him, on the 17th of Chyete 1248 B. S., with a message requesting him to pay what was due to the decreeholders, and save talooka Rajah Ram from sale, and that Ramnarain would repay the money in a month, otherwise, he, Hurreenarain, would himself be answerable for it; that, accordingly, as Hurreenarain was a man of property, with whom he had had several transactions, he paid the sum of 85 rupees, 10 annas, 6 pie, which was the amount due to the decreeholders, into the collectorate, on the 19th Chyete 1248, (31st March 1842,) and preserved the talooka from sale, but that, notwithstanding, Ramnarain and Hurreenarain refuse to refund the money, which is now claimed with interest.

Hurreenarain's answer sets forth, amidst much irrelevant matter, that he never sent Kunhaye Deb to respondent to borrow the money, but that Kunhaye Deb had told him that Ramnarain had himself borrowed it from respondent; and that he had nothing to do with Ramnarain, who had concluded with respondent in the institution of this suit.

Ramnarain asserts, in his answer, that respondent paid no money of his own under the decree, and that he knows nothing about Hurreenarain having directed respondent, through Kunhaye Deb, to pay the principal amount in suit, but that Hurreenarain, being

his elder brother and in family partnership with him, had the management of their affairs, and that as the debt, for which execution had been taken out, had been incurred while they, the brothers, were in family partnership, Hurreenarain sent the amount of the claim, with a note, to his relation, Sheonarain Deb, mohurrir in the moonsiff of Parkool, requesting him to buy the attached talookas Rajah Ram and Hurgobind, if they were sold for small sums, and otherwise to pay in the amount of the claim; that Sheonarain, who was a friend of respondent, purchased talooka Hergobind in the name of Gobind Ram, respondent's relative, paid the balance of the claim with the money belonging to appellant and his brother, and sent them a conveyance from Gobind Ram and the dakhila (receipt) with a letter; that, in consequence of a quarrel ensuing between the two brothers, and that Sheonarain and Kunhaye Deb are dead, Hurreenarain has made up this suit, and caused respondent to file the dakhila, with hope of ruining appellant.

The moonsiff (Moonshee Nazeerooddeen Mahomed) observes, in substance, that each of the defendants has denied having himself sent the money, so that Ramnarain's assertion, that Hurreenarain had sent it, and the evidence of his witnesses to the same effect, appeared to be false; that, although the witnesses adduced by Hurreenarain had declared Ramnarain to have been in custody of the nazir in Chyte 1241, and that he borrowed the money from respondent, the papers relative to his confinement, received from the collectorate, shewed that he was liberated in the previous month of Maug, and consequently that the assertion of Hurreenarain and the evidence of his witnesses were untrue; that, although respondent has produced no written authority from Hurreenarain, the dakhila filed by respondent shewed that he had paid the money, as indeed defendants allow, while respondent's witnesses attest his statement; and that, as Sheonarain and Kunhaye Deb were no longer alive, further investigation of the transaction was impracticable; and, under these circumstances, he decreed against Hurreenarain, and rendered the property, saved from sale by respondent's money, saleable for the amount decreed; releasing Ramnarain from responsibility, but saddling him with his own costs.

Appellant now repeats his old pleas, and urges that, had Hurreenarain not made up the suit, it would have been brought long ago; that, as no claim had been preferred against his (appellant's) property, it should not have been rendered liable; that the papers of the collectorate had falsified the statements of Hurreenarain and his witnesses; that though his (appellant's) defence was proved, the moonsiff had set it aside on trivial discrepancies; and that three letters from Hurreenarain, which were filed, would shew that he was the fabricator of the suit.

JUDGMENT.

There is no mortgage of the property, which the moonsiff has declared liable for the amount decreed, nor does respondent, in his plaint, petition that it may be rendered liable; the transaction declared by respondent is a simple debt contracted by Hurreenarain on behalf of his brother, without any proved authority, with promise, that if the latter did not pay, he (Hurreenarain) would liquidate it; and, under these circumstances, it does not appear to me proper to uphold so much of the moonsiff's decree as makes the property of Ramnarain liable for sale for the money paid by respondent, and saddles Ramnarain with his own costs.

IT IS THEREFORE ORDERED,

That the decree of the moonsiff be amended, by the decree being passed simply against Hurreenarain, who will be liable for his own and respondent's costs. Ramnarain's costs will be charged to respondent with liberty to recover them from Hurreenarain.

THE 22D JULY 1848.

No. 234 of 1847.

Appeal from the decision of Mahomed Moazum, Moonsiff of Nubbeegunge, dated 8th November 1847.

Rusheed Julkur, Appellant,

versus

Khelaye Julkur, Respondent.

RESPONDENT sued for restitution of conjugal rights over Zereena Beebec, and for the price of the ornaments, &c., stating that he married the said woman in Bysakh 1251, and cohabited with her; that, on the 2d of Asar 1253, Mooftee Julkur, her brother, and Bhedun Julkur, took her wearing ornaments of the value of 5 rupees, on a visit to her relations, with respondent's permission, but, instead of returning her, had placed her in the house of Rusheed Julkur, appellant.

Rusheed Julkur's answer sets forth that, in Bysakh 1253, he went to the house of Mooftee Julkur, and learnt that respondent had divorced Zereena; and that her mother and brother were consulting about marrying her; that respondent himself stated, on being asked by him, that he had divorced her in consequence of inability to support her; that finally her mother and brother married her to appellant in Asar 1253; and that they live together as man and wife; and he adds that no ornaments were put on the woman.

Respondent replied, stating that as Zereena was at his house previously to Bysakh, and left it on the visit mentioned in Asar,

appellant's statement of the negotiation for her marriage having taken place in Bysakh, could not be true: and that as he had not divorced his wife, appellant's marriage with her, if it had taken place, was a nullity.

The moonsiff (Mahomed Moazum) who caused local enquiry into the case to be made through two ameens, held it proved that the divorce alleged had not taken place, and, on these and other grounds, decreed that the woman should be delivered to her husband, with two rupees, the value of the ornaments proved to have been taken, with costs in proportion, rendering all the persons sued, saving Bhedun Julkur, liable.

Appellant now urges that the absence of a written divorce and of performance of the rite before the cazée, cannot, as supposed by the moonsiff, avoid the divorce and re-marriage, as a futwa would shew; that the ameens, deputed by the moonsiff, did not go to the place of divorce, and did not take the evidence of his witnesses; and he now prays for investigation at the place of divorce, and that a futwa be taken from the cazee.

JUDGMENT.

I hold it fully proved that Zereena Beebee was living with her husband till Asar, when she was taken away on a visit to her family, and was married, in the same month, to appellant. Under these circumstances the plea of divorce, which (see Macnaghten) must be repeated three times, with intervals of a month between each, and to direct cognizance of which no witnesses have been adduced or pointed out, falls to the ground.

IT IS THEREFORE ORDERED,

That the appeal be dismissed, and the decree of the moonsiff affirmed with costs.

THE 22D JULY 1848.

No. 238 of 1847.

Appeal from the decision of Baboo Hergouree Bose, Moonsiff of Russoolgunge, dated 24th November 1847.

Roocheenath Surmah, Appellant,

versus

Brijbullabh Surmah and others, Respondents.

APPELLANT sued Juggernath Surmah, and his sons, Brijbullabh and Keerteeram, uncle and cousins, and heirs of the late Omed-

narain, and Keerteenarain as a principal also, to recover 9 rupees, 9 annas, under a bond for 7 rupees, executed by the said Omednarain and Keerteenarain on the 30th Bysak 1257.

Brijbullubh and Keerteenarain answered, denying the alleged transaction, and pleading that the obligors were elsewhere on the date of the bond; that Keerteenarain could write, and would have signed it had it been true; that Omednarain's sister's sons, and not *they*, are in possession of his estate; that they have been sued on account of a dispute for land between them and appellant; and that inspection of the deed would shew it to be fabricated.

Appellant, in reply, denied the *alibi* of the obligors, and stated that Omednarain signed for Keerteenarain, and that Omednarain's nephews are not in possession of his estate.

The moonsiff (Baboo Hergource Bose) distrusted the evidence adduced by appellant, principally on account of discrepancies in it, because Keerteenarain had not signed his own name, and because Sobaram, one of the witnesses, had stated that he was not present at the execution of it, but was told that he had been made a witness, adding that the obligors had admitted receipt of the money; and he dismissed the suit.

Appellant now urges that of the subscribing witnesses, Bidianund is respondent's cousin, Sobaram their ryut, and Ramanath their relation; that Keerteenarain could not write very well at the time, and that therefore Omednarain signed for him; and that although Sobaram, whose name was written down by Bidianund at the instance of Keerteenarain, was not present at the execution of the bond, Omednarain and Keerteenarain had afterwards admitted it to him,—with other matter.

JUDGMENT.

The bond in suit appears to me to represent a *bonâ fide* transaction. Had it been otherwise, the witnesses would not have made the discrepancies apparent in their evidence; moreover they are connected with respondents, and the amount claimed is very small, so that I have no doubt of the justice of the claim against Keerteenarain and the heirs of Omednarain. But who the latter are, has not been investigated by the moonsiff, and the suit must be remanded that the investigation may be made.

IT IS THEREFORE ORDERED,

That the decree of the moonsiff be reversed; that the suit be remanded for the further enquiry indicated above; that the price of the stamp on the petition of appeal be returned; and that the remaining costs of appeal be provided for in the future decree of the moonsiff.

THE 24TH JULY 1848.

No. 9 of 1847.

Appeal from the decision of Radhagobind Shome, late Principal Sudder Ameen, dated 26th May 1847.

Roopchund Das, Musst. Sursuttee, widow of Umeerschund Das, and
Brijgobind Das, Appellants,

versus

Surroopchund Shah, Respondent.

RESPONDENT sued for possession of 2½ koolbas, 3 kear of land, in kittah mouzah Dewergaon, in talooka Mahomed Fyaz, No. 8 of pergunnah Jour Bunia Chung, purchased by him on the 3d August 1835, together with mesne profits, at the rate of 20 rupees per annum, for 10 years, 8 months, 28 days, and interest, in all 340 rupees, 4 annas, stating that the persons sued withheld possession of the land of the said mouzah under pretence of its being their *cheet* talooka.

Appellants answered, denying possession of any lands belonging to respondent's talooka, and of any land as a *cheet* talooka; and they urged that Roopchunder, appellant, is not a guardian of the minor children of the late Ootumchunder Das; that Roopchunder, appellant, Umeerschund, late husband of Sursuttee, were released from liability on account of the debts of Ootumchund, in the suit instituted by Chundee Dasee, and decided in appeal (1589) by this (the judge's) court on the 28th August 1844; that the widow of Perkaschund, the elder brother of Ootumchund, should have been sued; that the lands of talooka Fyaz are partly in the possession of Saheb Ram and others, and the remainder in the possession of the son of the late Rajah Ghumbeer Singh; that Teelayechund and other persons sued are the minor's (*i. e.* the children of Ootumchund's) ryuts in talookas Mahomed Nazim, &c.; and that this suit has been preferred at the instigation of Sheopershad Surmah and others.

Oodeygobind Nag, Kishun Munnee Nag, Bishun Munnee Nag, and Dabeepershad Nag disclaimed, in their answer, having any concern with any land belonging to respondent's talooka.

Sheopershad Surmah and Rajgobind Surmah presented a petition, declaring Teelayechund and other persons sued to be ryuts in talooka Mahomed Nazim and Mahomed Unfur, purchased by them.

The late principal sudder ameen (Rae Radhagobind Shome) observed, in substance, that, although appellants and Oodeygobind and others had produced witnesses in support of their pleas, they were unworthy of reliance, seeing that the testimony of respon-

dent's witnesses and of persons unconnected with the parties, taken, some of them, by the principal sudder ameen himself, and others, by the ameen deputed by him, together with the report of the ameen, the mozawaree record, and the bynameh filed by respondent, shewed the land in suit to belong to respondent's talooka; and that, after the sale had taken place, Shamanund and Beerchurrun kept possession, on the strength of their old private purchase, for the space of two years, after which Ootumchund, and after him Deenoonath and Chundernath his sons, with Umeer Chund, and after him his widow Sursuttee, together with Roopchund and Brijgobind, held possession, with participation of Oodey Gobind, Kishun Munnee, and Bishun Munnee; that, though Roop Chund and others had denied possession of the estate of Ootumchund and that Roop Chund was guardian of his (Ootumchund's) children, and asserted non-liability for the debts of Ootumchund, as declared in the suit of Chundee Dasee, still that case, which resulted in a decree against the estate of the deceased, was for money, while this is for possession of land, and the possession of appellants is fully proved, and, indeed in the suit of Jugbundoo and others under Act IV. of 1840, Roop Chund admitted being in possession of the estate of Ootumchund; and that the petition of Brijgobind, presented when the suit was under decision, together with the *nibund putra* adduced to shew that he was not in possession, were inadmissible, not having been mentioned in his answer: and, on these and other grounds, he passed a decree in favor of respondent, ordering that he should receive possession of the land in suit; and that out of 198 rupees, 12 annas, 3 pies, the amount of mesne profits ascertained by the ameen, the sum of 31 rupees, 7 annas, 2 pies, with interest from the date of his decree to the date of liquidation, should be paid by Shanundram and Beerchurrun Nundee, and the sum of 167 rupees, 5 annas, 1 pie, with interest from the date of the decree to the date of liquidation, and mesne profits from the day following the date of the decree to the date of obtaining possession, should be paid by Oodey Gobind Nag, Kishun Munnee Nag, Bishun Munnee Nag, Koopchund Das, (guardian of Deenoonath and Chundernath, minors), Brijgobind Das, and Sursuttee Dasee,—the whole of the parties made liable being responsible for the costs on each side in proportion to the sum decreed, the excess of the defendant's costs being charged with interest to respondent, and the other persons sued being absolved from the claim, and the decision being declared unprejudicial to the petitioners, Sheopershad and others.

Appellants now repeat their old pleas, and urge that the evidence on record shews that they were not in possession; that the year, month, and date of dispossession should have been specified

in the plaint ; that no good reason is exhibited for Shanund Ram and Beer Churrun, relinquishing the land ; that the sons of Ootumchund are, by virtue of their inheritance, in possession of whatever land their father owned in the mouzah in dispute, which, under the shasters, is not shared by appellants ; that they are in possession of no part of Ootumchund's estate ; that respondent has given no ground for Oodey Gobind and his party being in possession in conjunction with them, and has caused witnesses under his influence and living at a distance from the land in dispute, to give evidence conforming with his wishes ; that the ameen took the evidence of several persons in the absence of Brijgobind ; that the land involved in the suit under Act IV. of 1840, was the joint property of Roop Chund and Ootumchund, and is unconnected with the land in suit ; that the decree has been given contrarily to the former one (in the suit of Chunder Dasee) on supposititious grounds ; that Brijgobind came to Sylhet, and married the daughter of Perkashund, in 1247 ; but that the ameen had, notwithstanding, declared him in possession from 1244 ; that if the *nibund putra*, or marriage agreement, adduced by him, had been enquired into the truth, would have appeared, with other immaterial matter.

Oodey Gobind, Kishun Munnee, and Bishun Munnee, who defended the suit before the principal sudder ameen, have filed a petition dated 26th February last, which, not being within time, or filed as an appeal, requires no further notice.

JUDGMENT.

The ambiguous and evasive nature of the defence made by appellants, who neither state whether they are, or are not, in possession of the land in suit, leads me to believe the evidence of those witnesses who swear to their possession ; however, no final opinion can be given in the matter, for the investigation is obviously incomplete. It was the duty of the principal sudder ameen to enquire into the circumstances of *nibund putra*, filed by Brijgobind in order to shew that he could not, as the ameen has recorded, have participated in possession from 1244, seeing that he only became connected with Ootumchund's family in 1247 ; and this enquiry, being still requisite, it is necessary for me to remand the suit for further investigation.

IT IS THEREFORE ORDERED,

That the decree of the late sudder ameen be reversed, and the suit remanded for the investigation specified above, and such further investigation as may hereafter appear to be necessary. The price of the stamp of the petition of appeal will be returned, and the remaining costs of this appeal will be provided in the principal sudder ameen's future decree.

THE 28TH JULY 1848.

No. 14 of 1848.

*Appeal from the decision of Ramtaruk Rai, Moonsiff of Hingajeeah,
dated 30th December 1847.*

Sahebram Sein, Appellant,

versus

Oodaye Das and Laloo Das, Respondents.

APPELLANT sued for 32 rupees, damages for having been foully abused and threatened by respondents, in consequence of his having seized their cattle, which had trespassed on his land, and which were rescued by respondents.

Oodaye Ram, respondent, answered, alleging that one of his cattle eat a little of the rice of the widow of Asharam Dutt, who carried the animal off, but subsequently released it; and he declared the cause of suit to be enmity, from his having informed the officers of the ex-rajah of Jynteah that appellant had planted some bamboos on their master's land; and that the damages claimed were disproportioned to appellant's circumstances.

The moonsiff, Baboo Ramtaruk Rai, dismissed the suit, because the plaint did not set forth, as explained by two witnesses, that respondents had clubs in their hands when they came to appellant's house, while the third witness said nothing about clubs; because of other trivial discrepancies; and because the witnesses of Oodaye Ram, respondent, had established the defence.

Appellant now urges, that the discrepancies noticed by the moonsiff are insufficient grounds for the dismissal of this claim,—with other immaterial matter.

JUDGMENT.

The plea that the suit has been instituted, because Oodaye Ram gave information against appellant, is not proved, is *per se* weak, and is altogether nugatory as a reason for the suit having been brought against Laloo Das, who is not alleged to have joined in the information; and thus no ground is proved and no probable ground is assigned for a false suit. Moreover, trespass is admitted by Oodaye Ram to have occurred, and his own witnesses have testified to altercation having taken place between him and appellant, though *he* does not allow it; and the discrepancies noticed by the moonsiff are such trivial instances of difference as are not incompatible with a true story; and, on the whole, and with especial reference to the absence of any probable cause for a false suit, I see no reason to doubt the evidence adduced by appellant, whose statement I hold proved; and, look-

ing to the circumstances of the case, I am of opinion that a decree for 10 rupees, with costs in proportion; will satisfy the ends of justice.

IT IS THEREFORE ORDERED,

That the decree of the moonsiff be reversed, and the sum of 10 rupees be decreed in favour of appellant against respondents, with costs in proportion, and interest from the date of the moonsiff's decision to the date of realization.

ZILLAH TIPPERAH.

PRESENT : T. BRUCE, Esq., JUDGE.

THE 1ST JULY 1848.

Case No. 25 of 1847.

*Regular Appeal from a decision of Moulvee Mahomed Ali, Principal
Sudder Ameen, dated 7th September 1847.*

Henry Roe, (Defendant,) Appellant,

versus

Nicholas Joachim, (Plaintiff,) Respondent.

Case No. 26 of 1847.

*Regular Appeal from a decision of Moulvee Mahomed Ali, Principal
Sudder Ameen, dated 7th September 1847.*

Nicholas Joachim, (Plaintiff,) Appellant,

versus

Henry Roe, (Defendant,) Respondent.

Suit laid at Company's rupees 5,000.

THESE are appeals from one and the same decision.

The suit is an action for compensation in damages for loss of services and injury to character, by the seduction of an unmarried female between 15 and 16 years of age, the plaintiff's eldest daughter.

The plaint sets forth that the abduction took place on the night of the 12th March 1846; that on discovering next morning that his daughter was in the defendant's house, the plaintiff proceeded there in person, and demanded her restitution, but was refused; that he made repeated applications to the defendant in writing, to the same effect, with similar results, and at last recovered his daughter, only with the assistance of the magistrate, on the 25th June following, up to which period she had lived with the defendant in his house at Comillah, except during a temporary absence in the interior of the district, on which occasion she accompanied him. In a petition filed subsequently, the plaintiff stated that his daughter had given birth to a son on the 19th December of that year.

The defendant denied the abduction or seduction. He affirmed that plaintiff's daughter had taken refuge with him (defendant) on

the night in question, voluntarily and of her own accord, to avoid the harsh treatment of her parents, and in order that she might adopt measures with a view to her marriage, her parents having neglected to do so. He averred that she had accompanied him to the interior of the district, only from the dread of being taken back to her home by her father, during defendant's absence ; that being 16 years of age, she was competent, by the custom of England, to take steps for her own marriage ; that plaintiff made no attempt to get her back for three months ; and then only succeeded, with the assistance of an armed police force ; that defendant supposed she had come to his house with her father's knowledge, and next day informed her father where she was, and told him, when he came for her, that he might take her away ; and finally, that she was a woman of bad character, leading a life of vice with her father's knowledge and consent—a consent given for the sake of a portion of the wages of his daughter's infamy.

The principal sudder ameen gave judgment for the plaintiff, with damages to the amount of 500 rupees and all costs. The decision implies that the plaintiff had proved his case ; but the manner in which judgment is recorded almost leads to a different conclusion.

The principal sudder ameen states that neither loss of services nor the fact of abduction by the defendant, is proved, on the ground that they are of date subsequent to that on which the plaintiff received back his daughter. He rejects as irrelevant seven original letters addressed by the defendant to plaintiff and his daughter, filed by plaintiff to prove his case by admissions of the defendant made under his own hand. He rejects, as unworthy of credit, the evidence of some of plaintiff's witnesses of low caste. He states that the facts admitted by the defendant are sufficient to prove that there was more in his connection with the plaintiff's daughter than he chose to acknowledge ; and that the birth of a child, on the 19th December, afforded presumptive evidence against him ; but that, inasmuch as it appeared from the evidence of Chundecchurn Bannerjea and Mr. Martinelly, that plaintiff's daughter was in the habit of " going to other places," and as she shewed great want of propriety in leaving her father's house, and living with the defendant, he was not satisfied on the question of the child's paternity.

These are the sole reasons assigned for giving plaintiff a decree. One would imagine, on reading them, that they must lead to the dismissal of the suit.

From this decision both parties appeal ; the plaintiff, on the ground that the damages awarded are insufficient, and the defendant, on the plea that the plaintiff's case is not established, even on the principal sudder ameen's own shewing.

I am of opinion that the plaintiff has clearly proved the seduction.

I will not enter into the details of the evidence adduced by the defendant to prove that the plaintiff's daughter, whose age the defendant himself admits does not exceed 16 years, has long been an abandoned character: I reject it as quite unworthy of credit. A large body of witnesses has been examined by both parties on the point of her general respectability; but not a word is said by any one credible witness, from which the slightest inference against her reputation can be drawn, although it has been attempted to draw unfavorable inferences from the most innocent acts, such, for instance, as visits at the houses of respectable persons, in company with her parents and sisters. The evidence of certain menial servants of the defendant, and of a well known character Moulvee Afzul, I reject, as did the principal sudder ameen, as unworthy of the slightest consideration.

The plaintiff's witnesses, with the exception of some servants, are persons of the highest respectability; among them are two deputy collectors, the head master of the Government school, and others of unimpeachable character.

The admissions of the defendant to Mr. Leicester, Nubochunder Chatterjea, and Kassee Chunder Ghuttuck, afford evidence against him of a most convincing nature.

The letters rejected by the principal sudder ameen as irrelevant, form a mass of evidence against the defendant, the most conclusive that can well be imagined. The first of them is dated the 14th March, the day after that on which the plaintiff discovered what had become of his daughter: the last was written about the time of the institution of the present suit. They are full of expressions of the most ardent affection for the plaintiff's daughter. The defendant acknowledges in them, that he has done what is "very wrong," and throughout them leads the plaintiff and his family to believe that, were it not for what he calls the threats of the plaintiff, the parties might have been or still might be married. In the letters of latest date, however, he tells the plaintiff to do his worst, stating that when the suit is instituted, he (defendant) will not be idle; and that his reply in the case will elicit a great deal that may be detrimental, if not ruinous, to plaintiff and his whole family. He concludes his last letter by saying, that if the parents persist in their attempt at compulsion, he will marry some other person, although his affection for the plaintiff's daughter is still such as he can never have for any other.

The last letter bears no date, but appears to have been received only two days before the institution of the present suit; and yet the writer comes into court with the plea that the person to whom it is addressed, is a worthless profligate. It is proved by the evidence of Kassee Chunder Ghuttuck, that the plaintiff's daughter stated to the magistrate on the 25th June, and in presence of the defendant, that she expected the latter to marry her.

At an early stage of the case, the defendant endeavoured to make it appear that the letters were not admissible as evidence, because they were private correspondence. The objection was only overruled after a reference to this court by the principal sudder ameen.

The inference, which the principal sudder ameen draws from the evidence of Mr. Martinelly and Chundeechurn Bannerjea, I confess myself quite unable to account for.

The question involving the amount damages proper to be awarded, remains to be considered; and it is always a difficult one. The situation in life of the parties is, however, the main point to be taken into consideration in this case: for no amount of money could ever compensate for the injury done to the plaintiff and his family; and the line of defence adopted by the defendant, is only an aggravation of the original wrong. It is clearly not a case calling for light damages. The plaintiff is the head clerk in the office of the collector of this district. The defendant is a retired medical officer.

Apparently as reasons for awarding light damages, the principal sudder ameen states, 1st, that the circumstance of plaintiff taking back his daughter, shews that her conduct did not occasion him much distress; and 2ndly, that it appeared from a roobakaree of the deputy collector of Noacolly, that plaintiff had been imprisoned for embezzlement. With regard to the former of these reasons, it is sufficient to state that it would have been much to the plaintiff's discredit if he had not received back his daughter. With regard to the latter, it appears from documents filed yesterday by the plaintiff that he was again employed in the public service, by the officer who ordered him to be imprisoned, eight days after the order in question; and that the commissioner of revenue stated subsequently, in an official letter to the deputy collector, that the plaintiff's default did not arise from personal corruption. He would appear to have been held legally responsible, by the revenue authorities, but without any criminality attaching to him. The reasons assigned by the principal sudder ameen for giving light damages, appear therefore to be groundless.

The question of loss of service, I consider it needless to enter into. It forms the foundation of cases of this description in the English law, but only by a sort of legal fiction, the introduction of which into our courts is quite unnecessary.

Under all the circumstances of the case, I do not think that damages to the amount of 1,000 rupees can be considered excessive. A decree will issue accordingly, amending the decision of the court below, and dismissing the defendant's appeal.

All costs of the court below will be charged to the defendant, and also those of appeal. The defendant's appeal has proved groundless, but not so the plaintiff's; and the plaintiff could not reduce the value of his suit below its valuation in the lower court. Interest will be chargeable from the date of the principal sudder

ameen's decision to this date, on the sum decreed by the principal sudder ameen, including costs; and from this date, on the aggregate of those sums, and the amount excess damages decreed in appeal, including costs.

THE 3D JULY 1848.

Case No. 28 of 1847.

Regular Appeal from a decision of Moulvee Mahomed Ali, Principal Sudder Ameen, dated 23d November 1847.

Banoo Beebee and Kulsoom Banoo *alias* Luteefa Banoo, (Defendants,) Appellants,

versus

Khooda Buksh and others, (Plaintiffs,) Respondents.

Suit laid at Company's rupees 4,959-1-9-15.

THIS is a suit for a share of real property under the Mahomedan law of inheritance.

The principal sudder ameen gave plaintiffs a decree, and the defendants appealed.

In the petition of appeal the defendants stated that there were other heirs of Ameeroodeen, the party from whom the plaintiffs alleged that they inherited, besides the plaintiffs; and a claim was shortly put in by one of the co-heirs: but before the appeal was brought to a hearing, the plaintiffs and defendants petitioned to have judgment recorded in conformity to a private adjustment between them, thereby excluding the claimant.

Although the parties to this adjustment only petition to have the court's sanction to a private partition of property, which, they say, is already in their possession, their prayer cannot be acceded to; for a recognition of the partition necessarily involves a recognition of the rights of the parties respectively, to the extent assumed by them in their petitions; and this excludes the claimant altogether. To act on such petitions, would be to act in contravention of the provisions of Section 13, Regulation III. of 1793, which directs that the courts are not to pass a decree in any suit concerning the right of inheritance to real property, to which there are more claimants than one, without adjudging the property to all claimants entitled to any portion of it, in the proportions to which they may be respectively entitled; and without going into the merits of the claimant's title, it is impossible to act in the spirit of this law.

The suit must be remanded for re-investigation *de novo*, with reference to the claimant's plea, on the principle laid down in the law quoted above. When the case was before the lower court, the defendants affirmed (*vide* principal sudder ameen's proceeding of 3d July 1847,) that the claimant and another were co-heirs with

the plaintiffs; and if the plea had been investigated then, a remand would probably not have been necessary now.

The value of the stamp on which the petition of appeal is engrossed, will be returned.

THE 5TH JULY 1848.

Case No. 2 of 1848.

Regular Appeal from a decision of Moulvce Mahomed Ali, Principal Sndder Ameen, dated 8th February 1848.

Hurkishore Ræ, (Plaintiff,) Appellant,

versus

Mahomed Ashuk, Shaik Dhagon, and Mahomed Kamil, (Defendants,) Respondents.

Suit laid at Company's rupees 1,355-12.

THIS is a claim for a moiety (with interest) of the sale proceeds of a dependant talook in the 10-13-1-1 share of pergunnah Bulda Khal, sold under the provisions of Regulation VIII. of 1819, for the recovery of arrears of rent.

The plaintiff states that the talook was purchased by the defendant, Mahomed Ashuk, in the name of his son-in-law, the defendant, Sheikh Dhagon, at a sale under Regulation VIII. of 1819, on the 2d Jeit 1251 B. S.; that Mahomed Ashuk sold one moiety of it to plaintiff, on the 26th Assin following; transferred the remaining moiety to his own son, the defendant, Mahomed Kamil; and petitioned the collector, by the ostensible purchaser Dhagon, to have plaintiff and Mahomed Kamil registered as proprietors—the parent estate being Government property; and that the rent again falling into arrear, the talook was again put up to sale under Regulation VIII. of 1819, and re-purchased by Mahomed Ashuk, on the 2d Jeit 1253 B. S. The suit is for a moiety of the surplus proceeds of this latter sale.

Of the defendants, Mahomed Ashuk and Sheikh Dhagon, alone appeared. Their answers, although filed separately, are to the same effect. They deny that the purchase by Dhagon in 1251 was made on account of Ashuk, that a moiety of the talook was subsequently sold to the plaintiff, or that any such petition as that referred to by plaintiff, was filed by Dhagon; and they affirm that the petition in question was filed, and mention made of Mahomed Ashuk, in a statement of balances connected with the sale, through collusion on the part of the collector's amlah. Dhagon added that he had made the talook over to the plaintiff at his suggestion, with

a view to its assessment ; but that he little suspected that such a claim as the present would be preferred by him.

The whole amount surplus sale proceeds is in deposit in the collector's office, at the disposal of the plaintiff and Dhagon, provided they will grant a joint receipt for it.

The principal sudder ameen dismissed the suit, on the grounds that the plaintiff had entirely failed in proving that the purchase of the talook by Dhagon in 1251 was for and on behalf of Mahomed Ashuk, and consequently, that any transaction that might have taken place between the plaintiff and Ashuk, could not be allowed to operate to the prejudice of Dhagon. With regard to the petition before referred to as having been filed in the collector's office by Dhagon, the principal sudder ameen held that there was no good evidence to connect it with the party whose name it bears ; and even supposing it to have been filed by Dhagon, that it did not correspond with the plaint, inasmuch as it stated that Dhagon, and not Ashuk, was the purchaser, and that plaintiff had purchased a moiety of the talook from the former, not from the latter.

In my opinion the principal sudder ameen has taken a very proper view of the case. The evidence, although sufficient to warrant the presumption that there have been transactions between the parties, in connection with the talook, is yet altogether insufficient to establish the case as set forth in the plaint. The chief documentary evidence relied on by the plaintiff, is the alleged petition of Dhagon so often referred to, and a receipt said to have been granted by Mahomed Ashuk to the plaintiff, for the price of a moiety of the talook. But the account of the transfer, as given in the plaint, differs from the account given in either of those documents, and neither of them agree. If the transfer had been a *bonâ fide* one, it is difficult to understand why, in opposition to universal usage, the vendee should have been satisfied with a receipt for the price of his purchase, instead of requiring from the vendor a formal bill of sale. And further, it would appear from the receipt that the alleged transfer was, to a certain extent, conditional on the performance of certain acts by Dhagon, the ostensible auction purchaser. The sale of an 8 anna share of the talook to plaintiff may have been contemplated ; but that it ever was completed, there is no evidence to prove. The whole proceedings of the parties are of such a nature as to render it necessary that the evidence be received with great caution ; and this remark applies especially to the proceedings in the collector's office. The appellant urges that the original petition, bearing Dhagon's name, and the original sale papers be called for ; but nothing to be gathered from them, either as regards similarity of signature, or any internal evidence to be derived from them, could affect the general features of the case.

The decision of the court below is affirmed, and the appeal dismissed with all costs.

THE 5TH JULY 1848.

Case No. 140 of 1848.

Regular Appeal from a decision of Rajnarain Rae, Moonsiff of Nassirnuggur, dated 22d May 1848.

Zorawar Khan, (Plaintiff,) Appellant,

versus

Enayatoollah and others, (Defendants,) Respondents.

Suit laid at Company's rupees 63-12-3-4.

THE plaintiff brings his suit as farmer of mouzah Sreeghur, pergunnah Serael, for arrears of rent, alleged to be due from the defendants as jotedars, on account of a period extending from 1242 to 1252 B. S., both years inclusive.

He was nonsuited, because his plaint did not specify either the period of his own lease, or the dates of payment of rent by the defendants, for which he gave them credit; because the plaint stated that he held the farm at the time of instituting the suit, whereas it appeared from a petition, which he subsequently filed, that his lease had expired the year before; and because, of four brothers cultivating conjointly, three only were sued. In the petition referred to, the plaintiff stated that he had held farms of the land for the period in question under four different leases.

Nothing being advanced in appeal calculated to shew that the moonsiff's reasons for his decision are erroneous, or insufficient, the appeal is dismissed, without summoning the respondents, and the order of nonsuit affirmed with costs.

THE 6TH JULY 1848.

Case No. 142 of 1848.

Regular Appeal from a decision of Rajnarain Rae, Moonsiff of Nassirnuggur, dated 27th May 1848.

Ramnarain Dutt, (Plaintiff,) Appellant,

versus

Sheikh Khowāz, (Defendant,) Respondent.

• • Suit laid at Company's rupees 19-13.

THE appellant and another, as joint proprietors of some *karkoona* land in the 5 annas 12 gundahs share of pergunnah Serael, sued the respondent as their jotedar, for arrears of rent due under a kuboolut, said to have been executed on the 25th Assar 1251 B. S.

The moonsiff dismissed the claim, rejecting the kuboolut as a forgery; and from his decision an appeal is preferred by one of the plaintiffs.

As the appeal, although involving the rights of more than one party, is only preferred by one of them, it is inadmissible, and as such must be rejected. If the appellant's co-sharer declined to join with him in the appeal, the co-sharer might have been made a respondent, and the claim in appeal limited to the extent of the appellant's interest in it; but such an appeal as the present cannot be received. All costs payable by appellant.

THE 8TH JULY 1848.

Case No. 80 of 1848.

Regular Appeal from an order of Rajnarain Rae, Moonsiff of Nassirnuggur, dated 9th March 1848.

Mahomed Kuleen and others, (Defendants,) Appellants,

versus

Nubo Kishen Rae and Raj Kishen Rae, (Plaintiffs,) Respondents.

Suit laid at Company's rupees 298-0-0-0.

THIS is a suit instituted under the provisions of Clause 8, Section 15, Regulation VII. of 1799, for damages for opposing the plaintiffs in the measurement of certain lands in their zemindarec.

The appeal is preferred from an order of the moonsiff, directing the parties to adduce evidence on the points for adjudication in the case, and for the appointment of an ameen to measure the mouzah in which the lands are situated.

The reasons of appeal are—1st, that the lands are not liable to measurement, under the conditions on which they are held; and 2ndly, that the mouzah being in the joint possession of other parties, besides the plaintiffs and the defendants, the measurement of it, without making those other parties defendants, is opposed to the practice of the courts.

As the former of these reasons involves a decision on the merits of the case, it forms no ground of appeal at the present stage of the proceedings: the point on which it bears has not yet been decided by the moonsiff. Neither is the second of the reasons valid: for the object of the measurement is only to ascertain the quantity of land in the occupation of the defendants, and the rent payable for it, with a view to fix the amount damages to be awarded, should the plaintiffs establish their case. The order for the appointment of the ameen therefore, under the circumstances, forms no ground for a regular appeal. The appeal implies that the suit has virtually been decided; but such is not the case.

I reject the appeal as inadmissible.

ZILLAH TIRHOOT.

PRESENT: J. F. CATHCART, ESQ., JUDGE.

THE 28TH JULY 1848.

Case No. 80.

*Regular Appeal from the decision of Moulvee Ashruf Hossein Khan,
Additional Principal Sudder Ameen, dated 24th November 1846.*

Gobind Purshad, after his demise, Gopaul Doss, his nephew, and
Bunsee Lal, his son, (Plaintiffs,) Appellants,

versus

Shree Kishen and Teluckdharee Lal, (Defendants,) Respondents.

CLAIM, Company's rupees 4,994-4, principal and interest, lent on a bond, due in two months, dated the 10th Assar 1253 F. S., (25th September 1845.) The plaintiffs set forth that the defendants (respondents) and another executed the above bond in their favor, in settlement of revenue paid and money lent on their account; and that notwithstanding the expiration of the period of the bond and frequent demands, they, the defendants, have refused to pay: they therefore now bring their action for principal and interest.

In the original suit there were three defendants, of whom two, Shree Kishen and Teeluckdharee, respondents in this case, denied the claim *in toto*, alleging that they never had any dealings whatever with the plaintiffs, nor even granted or signed any bond in their favor; and as for the revenue alleged by the plaintiffs to have been paid into the collectorate on their account, they had themselves forwarded the amount to Gunga Bishen, the third defendant, with instructions to pay it into the collectorate, and if he, Gunga Bishen, had gone and borrowed money or executed a bond in their name but without their knowledge or authority, it was no fault of theirs, and they could not be held liable; and that neither were they present when the bond was signed. Gunga Bishen, the third defendant, who also appeals from the same decision in the following number, acknowledged the claim to be just, and alleged that the two other defendants were perfectly aware of the transaction, were present at the time, and with their consent he signed their names to the bond as well as his own.

The lower court gave a decree for the whole amount claimed in favor of the plaintiffs, but only against the third defendant, Gunga Bishen, who acknowledged the claim to be just, and absolving the two others from all claim and costs of suit, which latter was ordered to be paid by the plaintiffs,—observing that, although the plaintiffs produced

evidence to prove that all three defendants were present at the signing of the bond, and that it was executed with their consent, yet that notwithstanding the alleged presence of the whole of the defendant the bond was only signed by one without any apparent reason or authority, that such a proceeding was irregular and unsatisfactory, and threw suspicion on the claim.

From this decision the plaintiffs appeal to this court, urging that their claim had been fully proved against all three defendants; and it was very unjust to decree the case only against one defendant, who was unable to pay the claim.

From the proceedings it appeared clearly that the bond was only signed by one of the defendants, viz. Gunga Bishen, and that without any apparent reason or authority; moreover, two witnesses produced by the respondents depose that they were themselves present at the signing of the bond, but refused to become witnesses to it, as the respondents were not then present. I agree with the lower court in considering the nature of the claim as against the two respondents suspicious and irregular. It is therefore ordered that the appeal be dismissed with costs.

THE 28TH JULY 1848.

Case No. 81.

*Regular Appeal from the decision of Moulvee Ashruf Hossein Khan,
Additional Principal Sudder Ameen, dated 24th November 1846.*

Gunga Bishen, (Defendant,) Appellant,

versus

Gobind Persad and others, (Plaintiffs,) Respondents.

CLAIM as above.

This is another appeal from the same decision of the lower court as in No. 80, decided this day, and of which the details are fully given above. As the case is the same, the same order, and on the same grounds, is therefore passed, viz. that this appeal be also dismissed with costs.

PRESENT: JOHN FRENCH, Esq., ADDITIONAL JUDGE.

THE 5TH JULY 1848.

No. 144.

Regular Appeal from a decision passed by Moulvee Neamat Ali Khan, Principal Sudder Ameen, Mozufferpore, dated 4th February 1846.

Gopaul Lall and Musst. Chutter Koonwur, (Plaintiffs,) Appellants,
versus

Bhyro Singh and four others, Principals, Gomanee Singh and
 seven others, Etyatun, (Defendants,) Respondents.

THIS suit was for possession and mutation of their names in the records of the collectorate of 4 annas, 13 gundahs, 1 cowree and 1 kraunt of the whole village Reigah, aslee and dakhlee, pergunnah Mhylah. Action laid at Company's rupees 4,886-14-2, including mesne profits.

The purport of the plaint sets forth Bhyjoo Takoor, Jeeblall Takoor, and Ramdyal Takoor sued the proprietors, Chowdree Mundurnarain Singh and others, for the whole of the abovementioned village, during which period those three continued to borrow from the plaintiffs. On the 4th of Maugh 1248 Fuslee, an adjustment of accounts was effected, which exhibited the sum of rupees 4,995 was due to the plaintiffs, for which amount the defendants wrote a deed of partnership, stipulating to let the plaintiffs into a share of 4 annas, 13 gundahs, 1 cowree, and 1 kraunt of the aforesaid village after obtaining a decree of the case; who having obtained a decree in the appeal court of the additional judge, and not having put the appellants in possession agreeably to the conditions of the deed, this suit is instituted.

Defendant, Ramdyal Takoor, answered he was not a plaintiff in the case alluded to in the plaint, he was at that time a minor, he signed no deed of partnership. Bhyjoo Takoor and others sued *in forma pauperis*; they did not require to borrow, to carry on the suit, therefore the document is a fabrication.

Bhyro Singh and two others, the sons of Bhyjoo Takoor, answered similarly as the above.

The answer of Jeeblall Singh was the same as that of Ramdyal Takoor.

The answer of Gomanee Singh and others, the additional defendants, set forth they are unjustly sued, they had no concern in the matter.

The principal sudder ameen dismissed the case, on the grounds: the document of partnership was on account of money borrowed to carry the expenses of the court, agreeably to a decision as precedent of the judge, in which mention is made of a precedent decision of the Sudder Court, that it is in a manner of a lottery, is not admissible and the decision passed by the additional judge filed by the plaintiffs is not applicable to this case, as the plaintiffs have in their plaint stated the money was borrowed for the expenses of the court.

Plaintiffs appealed against this decision urging that, on inspection of the document, it will be proved the money was not borrowed for the expenses of the court, but for their own expenses the document was given. The decision of the judge filed as a precedent is for the expenses of the court, which is not applicable to this case, but that filed by them, appellants, a decision of the additional judge, regarding money borrowed for marriages, &c., is adapted to this case, which the principal sudder ameen did not take into due consideration.

COURT.

The plaint makes no mention from what date the defendants commenced to borrow money from the plaintiffs, nor does the document of partnership, but both set forth from the commencement of the institution of the suit by Bhyjoo Takoor and others *versus* Chowdree Mundernarain Singh and others for the village Reigah until the date of entering into the deed. The purport of which tends to lead the mind to believe the money was borrowed to discharge the expenses of the court; yet Bhyjoo Takoor and others sued *in forma pauperis*, thereby could not require any money to carry on the suit. The strangeness of lending particularly to paupers for a period more than ten years while that case was pending in the several vicissitudes thereof, and to the extent of near 5,000 rupees cannot be credited by any court; this coupled with the circumstance, the plaintiff's witnesses were wholly unacquainted whether there was any adjustment of accounts between the parties, consequently the legal proof of borrowing on the part of the defendants is not proved, thereby throwing very great suspicion on the deed of partnership to be fabrication, for there is not much dependance to be placed on the mere evidence of witnesses that the defendants signed the deed of partnership, and that alone is not sufficient to prove the claim. Under these circumstances the appeal is rejected, with costs of both courts chargeable to the appellants: the decision of the principal sudder ameen is affirmed.

THE 8TH JULY 1848.

*Regular Appeal from a decision passed by Syed Ashruff Hoosein,
Second Principal Sudder Ameen, Mozufferpore, dated 27th
March 1846.*

No. 310.

Shaik Beesharut Ali, Shaik Lootuf Ali, Beebee Sukeenah, Shaik
Rajeeb Ali, and Meer Ashghur Ali, (Defendants,) Appellants,

versus

Musst. Soorja Koonwur, the mother, and her daughters, Musst.
Doorputtee Koonwur and Purmeishree Koonwur, (Plaintiffs,) Respondents.

No. 338,

Musst. Soorja Koonwur, (Defendant,) Appellant,

versus

Shaik Beesharut Ali, Shaik Lootuf Ali, Musst. Neiseerun, wife of
Shaik Beesharut Ali, Musst. Beebee Sukeenah, Shaik Rajeeb
Ali, and Meer Ashghur Ali, (Plaintiffs,) Respondents.

THE action was laid at Company's rupees 1,066-10-8, and the
suit for possession of 2 annas portion within 4 annas share of the
16 annas of village Kootoobpore Doomree, purgunnah Hajee pore,
purchased under bill of sale, dated 14th of October 1838, for the
sum of Sicca rupees 1,000.

Both these appeals are against the same decision. This case
was originally tried and decided on the 7th of August 1843,
when it was dismissed, on grounds the bill of sale was not suffi-
ciently proved. On appeal, the case was returned for re-investiga-
tion, on points indicated in the decision passed on the 4th of August
1845, by this court. On re-investigation of the case, the second
principal sudder ameen decreed in favour of the plaintiff, 1 anna
and 12 gundahs, on the grounds the defendants acknowledged
their father was seisin with that portion, and the plaintiffs had not
proved the vendors had 2 annas portion to dispose of. The ap-
pellants under No. 310, urge: as the sale to Musst. Sukeenah is
proved to be prior to the sale effected with Musst. Soorja Koon-
wur, thereby the plaintiffs' bill of sale is of no validity, how could
the principal sudder ameen pass a decision in their favour for 1
anna and 12 gundahs portion?

The appellants under No. 338 urge that the witnesses on their
part proved the father of the vendors was seisin with 2 annas
portion of the property, if not, the vendors would not have written
a bill of sale for 2 annas; from these circumstances they are en-
titled to the whole 2 annas, and thereby shewing the decree for 1
anna, 12 gundahs, passed by the second principal sudder ameen,
is wrong.

COURT.

• The deed of the receipt of earnest money, rupees 40, to bind the bargain made with Beebee Sukeenah, for the sale of 1 anna of the 2 annas under dispute, is dated 20th of September 1833 ; it stipulates to pay the purchase money, 400 rupees, in two months, and it is to be noted that there are two alterations in the first line of the deed, the first is in the name of Nusserun, the whole of the letters in that name, with the exception of the last letter *n*, are altered, the second is in the name of Zealul Huck. *z*, *e*, *a*, are alterations. These alterations throw discredit on the document. The bill of sale to Musst. Soorja Koonwur is dated 14th October 1838, five years subsequent to the deed of receipt of the earnest money, and one year, one month, and twelve days prior to the date of receipt of the purchase money from Beebee Sukeenah, which receipt is dated 5th of Aughun 1247 Fuslee; which date, on referring to the calendar, corresponds with 26th of November 1839. This receipt does not prove the prior sale to Beebee Sukeenah, but contrariwise, she had forfeited her earnest money, if she ever paid, and that the purchase money was not made over, if ever paid; for the proof thereof is not established by evidence of the witnesses adduced by Beesharut Ali and Lootuf Ali, but tends to throw a disbelief on the whole transaction alleged to have been effected with Beebee Sukeenah. The birth and existence of Shaik Rajeeb Ali, their alleged half brother, has not been attempted to be established, as required by this court on returning the case to the principal sudder ameen for re-investigation; or any proof that Beebee Sukeenah was the daughter of Shaik Khareemullah, and came into possession of 8 gundahs share of his heritage. From the decision of the judge, dated 4th of March 1837, it appears Musst. Soorja Koonwur was plaintiff *versus* Chowdree Dushtdown and others, were defendants, among the several estates of which the plaintiff was dispossessed by Chowdree Dushtdown, that of village Kootubpore Doomree is specified, as being then under lease to the plaintiff, on advance of Sicca rupees 700. And Musst. Soorja Koonwur in the re-investigation of the case proved by the evidence of witnesses that Shaik Khodabuksh held 2 annas portion, and leased the said 2 annas portion to Chowdree Odah Singh, the husband of Musst. Soorja Koonwur; and that Shaik Beesharut Ali and Shaik Lootuf Ali sold the said 2 annas portion on receiving 300 rupees over and above the 700 rupees advance made at the time of the lease, making 1,000 rupees for the sale of the 2 annas; and that Shaik Khodabuksh had no other sons but Shaik Beesharut Ali and Lootuf Ali. Under these circumstances the appellants under No. 310 have not proved their allegations, their appeal is dismissed. The appellants under No. 338 having proved their claim, a decree is passed in their favour for the whole 2 annas

share, the costs of suit of both courts to be chargeable to the respondents, Beesharut Ali, Lootuf Ali, Beebee Sukeenah, and Beebee Nusseerun. The decision of the principal sudder ameen is amended and affirmed.

THE 15TH JULY 1848.

NO. 276.

Regular Appeal from a decision passed by Moulvee Neamat Ali Khan, Principal Sudder Ameen, Mozufferpore, dated 3d of March 1846.

Mohunt Soodursun Doss and Bhyroduth *alias* Bhugwan Doss,
(Defendants,) Appellants,

versus

Syed Imdad Ali, and three others, the heirs of Syed Ershad Ali,
deceased, (Plaintiffs,) Respondents.

THIS suit was for the possession and mutation of their names of 2 annas within 6 annas named puttee Kurd, of the whole 16 annas of village Mhael, purgunnah Hajeeopore, and for the cancelment of chittee bhurdeenamah, dated 15th of May 1834, together with mesne profits. Action laid at Company's rupees 1,530, 2 annas, 11 pies, 16 krants.

The plaint sets forth within the puttee Kurd 2 annas appertained to the plaintiffs, and 4 annas to others; the whole village being rent-free land, it was attached by the officers of Government under the II^d Regulation of 1819; the petitioners, together with the other proprietors, petitioned for the settlement with them for their respective shares. The defendants, being lessees of the whole puttee Kurd on advance, also applied for the settlement to be made with them. The deputy collector effected the settlement with the defendants. An order was passed by the Sudder Board, not to effect the settlement with the farmers, but with the proprietors. The defendants then filed a bhurdeenamah chittee for the interest, in lieu of a bond debt, which induced the deputy collector to continue the settlement with the defendants; and directed the plaintiffs to sue in court for the cancelment of the burdeenamah chittee: that order having been affirmed on appeal against it, is the cause of this suit.

Defendant, Bhyroduth, in his answer, alleged he was merely a mooktar, therefore the suit against him was not correct.

Mohunt Soodursun Doss, defendant, alleged the 6 annas puttee Kurd was, by Syed Ershad Ali, the father of the plaintiffs and others, leased to Raja Bussunt Rae, on advance of Sicca rupees 4,551, from 1213 to 1219 Fuslee, stipulating the lease should be continued to be held until the advance was discharged; it is dated the 11th of Jummad-us-sanee 1220 Hjree, agreeing with 1212 Fuslee, it has the impress of the kazee's seal, and registered. The aforesaid raja transferred the lease and the advance to Mohunt

Narain Doss, his uncle, and Mohunt Rajgopaul Doss, the priest, from which circumstance the lease came into his possession. The deed bhurneenamah is for 25 rupees in lieu of interest payable on bonds, the objection to which by the plaintiffs is wrong.

Syed Kamal Ali answered, the plaintiffs are not sharers in the property to the extent they have sued for. The disputed property is in the lease held by the defendants. The defendants' bhurneenamah is a fabrication.

The principal sudder ameen passed a decree in favour of the plaintiffs, arising from the original bhurneenamah chittee not having been filed after having been called for, throws a suspicion thereon it cannot be verified; and the copy of evidence of a witness given in another case filed, does not establish any proof thereof, it is therefore cancelled. The names of the plaintiffs to be entered in the mutation book, and to be put in possession of 2 annas of the revenue and land of the puttee Kurd.

The defendants appealed, urging the disputed property is in their possession by virtue of the lease; without first suing to cancel the lease, to do so for the cancelment of the bhurneenamah is not correct. The advance on the lease not having been paid, the decision of the principal sudder ameen is not correct.

COURT.

The plaintiffs sue for the possession of 2 annas of the puttee Kurd and the cancelment of the bhurneenamah. The defendants plead they hold the land not only by the bhurneenamah, but also from a lease on advance of the whole six annas of puttee Kurd, and until that advance be discharged they claim a right to retain possession. From perusal of the papers, there is every reason to believe the bhurneenamah chittee (the original, said to have been lost) was not strictly a correct one. The cancelment thereof by the principal sudder ameen is considered proper, consequently the plaintiffs are entitled to have the settlement of the land to be made with them; but of the exact portion and the right of being put in possession thereof, no investigation appears to have been made; hence in that portion of decision of the principal sudder ameen, which decrees the plaintiffs are entitled to a separation of, and to be put in possession of the 2 annas jumma and land, and in the face of the lease on advance of the whole 6 annas of puttee Kurd, which is filed, there is a seeming incorrectness. Under these circumstances, ordered, the decision of the principal sudder ameen be reversed, and the case sent back for re-investigation, to call on the plaintiffs to establish their right to 2 annas portion of the puttee Kurd and their right to the possession of the same, and to call on the defendants to establish their right to possession of the disputed portion of puttee Kurd—after re-investigation thereof, to pass a decision according to merits of the case. The amount of stamp of appeal plaint to be returned to appellant.

THE 18TH JULY 1848.

No. 14.

Regular Appeal from a decision passed by Moulvee Neamat Ali Khan, Principal Sudder Ameen, Mozufferpore, dated 3d December 1845.

Heera Lall Doss and three others, (Defendants,) Appellants,
versus

Bhugwutnarain Singh and nineteen others, (Plaintiffs,) Respondents.

THE amount of action is laid at Company's rupees 5,000, and for the possession of 500 beegahs of land, called Hoosrahee, the dakhlee, or dependance of village Bussuntpore Pukree, pergunnah Mhylah, and for the reversal of proceeding under IVth Act of 1840, dated the 5th of November 1841.

This case was investigated by the present principal sudder ameen in the year 1843, and on the 15th of July 1843, dismissed the case. On appeal, it appearing to this court the plaintiffs claimed the property under dispute, as revenue land appertaining to their estate Bussuntpore Pukree, the defendants, as belonging to them exempt from revenue, designated koonbah, or in lieu of blood; no reference having been made to the collector to ascertain whether the property under dispute was revenue land or exempt therefrom; the case was returned to the principal sudder ameen on the 27th of March 1845, to submit the case to the collector under the 1st Clause, 30th Section, II^d Regulation of 1819, and, after the return of the case to his court, to re-investigate the matter, and pass a decision according to the merits of the case. In conformity to the above instructions the case having been forwarded to, and returned by the collector, the principal sudder ameen re-investigated the case and passed a decision in favor of the plaintiffs on the grounds:—The collector reported the property under dispute was land paying revenue to Government; and on perusal of the papers of the case together with those filed by the collector, it not appearing from the registry books of the collectorate of land exempt from revenue, for the years 1180, 1189, 1202, and 1209 Fuslee, or any other papers of land exempt from revenue, that any insertion or mention of the village Hoosrahee being exempt from revenue, or as being under koonbah grant. From the amuldustuck, or order to put in possession, filed by the defendants, it appears, from the tenor thereof, it was merely from a dispute that arose between the canoongoes themselves; it was in the power of the collector to adjust, but it was not in the province of the collector to give any person land that was held under jageer tenure by another, and that exempt from revenue as koonbah, or in lieu of blood. From the book 1224 Fuslee, detailing list of

villages to 1228 Fuslee, was formed by themselves, that is, Heerah Lall Canoongoe, is contrary to the registry of 1180 Fuslee, and to their ancestor's application for the settlement of Bussuntpore Pukree aslee with dakhlee, and contrary to the book of settlement land for 1201 Fuslee. The village Hoosrahee is inserted, and is termed aslee, separated and distinct from village Bussuntpore Pukree, is not to be depended on. From the papers filed by the plaintiffs, copy of proceeding of the foudarry, dated 15th October 1823 A. D., copy of decision passed by the arbitrators, in which Heera Lall Doss Canoongoe was one of the arbitrators, in the case of the boundary dispute between the village Bussuntpore Pukree and village Meetuwah, copy of decision of the register, confirming the decision of the arbitrators, copy of report of butwarreh, or partition, of Bussuntpore Pukree, aslee and daklee, dated 27th September 1799; and at the request of the plaintiffs, the case decided by the register was called for, and such copies as were taken therefrom and filed in this case, were compared and found correct. From perusal of all papers filed by the plaintiffs, their plaint is ascertained to be right and proper.

The defendants appealed against this decision, urging the collector in his proceeding remarked it was the right of the plaintiffs, and should be so decreed, is not the province of the collector, but merely to state whether the land under dispute was revenue or exempt from payment of revenue to the Government. Notwithstanding it is proved by the records of the Government that it is exempt from revenue as koonbah, it has been decreed to the plaintiffs by the principal sudder ameen. The village Hoosrahee, as daklee, or appendage of Bussuntpore Pukree, is not proved by any paper in the collectorate.

Respondents answered: The amul dustuk, copy of hookoom-nameh, or order, and copy from book of land exempt from revenue dated 1228 Fuslee, filed by the appellants, are of no validity. The appellants claim the land as koonbah, have not filed any document in proof thereof. The village Hoosrahee as an appendage of Bussuntpore Pukree has been partitioned as such, and confirmed by the Government.

COURT.

It is a known fact, at the time of the decennial settlement, and subsequent thereto, proclamations have been issued inviting and directing the holders of grants of land exempt from revenue to produce them at the collectorate for the registry thereof. The appellants' ancestors are said to have been, and themselves are stated to be canoongoes, hence the plea of ignorance of the proclamations to register grants of land exempt from revenue cannot be urged by them. Moreover, the appellants' ances-

tors were proprietors of the estate Bussuntpore Pukree, aslee and daklee, for they made application in 1201 Fuslee for the settlement thereof to be effected with them; at which time they could with equal facility have registered the grant, or decree, for the village Hoosrahee Koonbah, or land in lieu of blood. Collectors obtained the assistance of the canoongoes to form the register of the revenue estates, the names of the daklee, or dependant villages to Bussuntpore Pukree were not satisfactorily given, or that the village Hoosrahee was omitted, or wrongly named, that they might fraudulently retain it after disposal of the other portions of the estate Bussuntpore Pukree by sale and otherwise, which now appears to have gone from them.

There being no registry of the village Hoosrahee as exempt from revenue until the formation of the book of 1224 to 1228, which was formed by Heera Loll Dass, one of the appellants, no confidence can be placed thereon, of its validity. The amuldustuk filed by the appellants in the original case, is dated in English 5th of June 1788, with the signature of "R. Bathurst, collector," and impression of a seal, dated 1200: it also appears to have been copied in a book of copies in the collectorate. This book is not bound, nor are the pages numbered, or signed by any person. Having called for, from the collectorate, original documents with Mr. Bathurst's name and seal of office, to ascertain whether the amuldustuk was genuine or not, the number of 20 original documents were brought; they had all of them merely the initials R. B., collector, the seals were similar, but the year inserted in the seal on the amuldustuk is 1200; and the year in all the seals on the documents brought from the collectorate is 1201, although two of the documents were for 1788 A. D. A letter book from the collectorate was adduced in which Mr. Bathurst's name was written in full, one being written on English paper and other on country paper, did not accurately correspond. The difference in the year of the seals throws a doubt on the genuineness of the amuldustuk. The copy of hookoomnamch, or order, is altogether of no utility in proof, copy having been obtained from the kazee's registry book, no village mentioned therein or any official signature thereon. From the butwarah, or partition papers filed, it appears the village Bussuntpore Pukree, the principal and two dependant villages Buryarpore and Hoosrahee were partitioned by officers of Government; the partition of the first 8 annas portion was effected and completed on the 17th January 1800, corresponding with 1207 Fuslee, at which time the appellants did not come forward with any objection; the butwarah of the other 8 annas portion of the said villages commenced in 1827 A. D., and the partition was completed on the 1st of August 1832, and confirmed by the revenue commissioner 7th January 1833. On the 27th of January 1828 the appellants

preferred a petition to the collector, claiming the village Hoosrahee as their koonbah, on which petition and on that date an order was passed for the petitioners to carry their documental proofs to the person forming the partition; they do not appear to have followed the collector's instructions, for the collector, in his proceeding at the conclusion of the butwarah, states, as the petitioners have not adduced their proofs in the course of four years, their claim is rejected. The land stated by the appellants to be their koonbah, having gone through the operation of a partition, the courts have not the power to interfere in a manner that would annul the partition under XIXth Regulation of 1814. The appellants did not make any objection on the first partition that took place, although a portion of the village Hoosrahee was included therein: although an objection was made about the commencement of the second partition, yet during the course of more than four years, they did not produce to the person forming the partition any document in proof of their allegation to the collector, and the documents filed in court in the original case do not yield sufficient proof of their right to the village as their koonbah. Therefore, ordered, their appeal be dismissed with costs of both courts chargeable to the appellants, and the decision of the principal sudder ameen is affirmed.

THE 19TH JULY 1848.

No. 311.

Regular Appeal from a decision passed by Moulvee Neamat Ali Khan, Principal Sudder Ameen, Mozufferpore, dated 7th March 1846.

Luchmeenarayan Singh and thirty-one others, (Plaintiffs,
Appellants,

versus

Rambuksh Singh and twenty-seven others, (Defendants,
Respondents.

THE amount of action in this case is laid at Company's rupees 4,153-5-6, and the suit for the investigation of right to the property, possession, and partition of the revenue and lands of 10 annas within 12 annas, of the whole 16 annas of each of the villages Bhudeihund, Heemayunpore, Pindur, Raypore Jugger-nauth, principal with dependencies 6 villages, purgunnah Nanpoor.

Purpose of the plaint: These villages were the estates of Ram-sah Doss, deceased, the ancestor of both parties, who had four sons, first, Bindrabund, the ancestor of Rambuksh and eight others of the defendants; second, Mudwun Doss, ancestor of Luchmeenarayan and eleven others of the plaintiffs; third, Soorut Singh, ancestor of Hurruk Lall and eight others of the plaintiffs; fourth,

Joykishen Doss, who had two sons, first, Jowarmull, the ancestor of Gomanee Lall and eight others of the plaintiffs, second, Saheeb Ram, ancestor of Bussunt Lall and ten others of the defendants. At the decennial settlement, the names of the ancestors of the defendants were recorded in the collectorate, and the ancestors of the plaintiffs remained in possession on the estate. Formerly, the ancestors and the plaintiffs sued for 10 annas share of one village, Bhudeihund, and mentioned in the plaint they would hereafter sue for the other villages. On the 10th of December 1832 the case was nonsuited by Bukshesh Ali, principal sudder ameen, and directed to sue for all the villages together : hence the present suit.

Rambuksh Singh and eight others of the defendants alleged : The plaintiffs had no concern in the villages. They have not mentioned in the plaint when they were dispossessed. The villages were acquired by their ancestor Bindrabund by purchase under two bills of sale—Heemayunpore, under bill of sale dated 11th of Ramzan 1101 Hijree, corresponding with 1096 Fuslee, from Hussun Khan, for the sum of Sicca rupees 64-15-2—the other villages, under bill of sale dated 17th Jummad-us-sanee 1095 Hijree, from Yurdyar Beig, attorney of Hussun Khan, the vendor, for the sum of Sicca rupees 185, from which time they have continued in their possession by regular descent.

Goburdun Lall and three others, defendants, allege the suit of the plaintiffs is correct ; and in possession of Rambuksh Singh and others ; they themselves are not in possession, and have been unjustly sued.

Modee Raot and three others, lessees, filed answer similar to that of Rambuksh Singh and others.

The other eleven defendants allowed the case to go by default.

The principal sudder ameen dismissed the case, on the grounds : The plaintiffs had not proved the several villages were acquired by, and the property of Ramsah Doss. The defendants have proved they were acquired by their ancestor, Bindrabund, and in their possession ; and the plaintiffs have never been in possession ; and the plaint is barred by lapse of time. •

The plaintiffs appeal against this decision, urging : They had filed a decision, dated 15th of September 1810, passed by the sudder ameen, in which case Durgaduth and others were plaintiffs *versus* these defendants, and was decided by adjustment by the parties, and prove Ramsah Doss was ancestor of both parties. The principal sudder ameen states, if we, the appellants, are in possession, where is the necessity of suing ? There was 121 beegahs of mulikana measured, and we are in possession of a proportionate share thereof. From the date of the nonsuit twelve years have not elapsed, and this suit was instituted within that time.

COURT.

The first point to be enquired into is, whether this suit falls under the rules of limitation; if not, then the other points of the appeal will be entered into. The appellants rest their right of claim to the share sued for, in virtue of the solanamah, or adjustment decision, passed on the 15th of September 1810, by which some of their brethren obtained a share. From the date of this decision, to that of institution of this suit, 7th December 1844, thirty-four years, two months, and twenty-two days have elapsed. They allege a suit was instituted in the interim and nonsuited on the 10th of December 1832, from which date twelve years had not elapsed, which is of no avail to them, inasmuch in that very nonsuit decision is mentioned that suit had not been instituted within the prescribed period, yet gave them the benefit of a nonsuit, arising from insertion in that plaint they would sue for the shares in the other villages hereafter. The case which was nonsuited, as appears from the register book of the court (the original case not to be found by the record keeper) to have been instituted on the 31st of March 1828, which shews a lapse of seventeen years, six months, and seventeen days from the date of decision in favor of their brethren; and from date of nonsuit decision to the institution of this suit there was a lapse of eleven years, eleven months, and twenty-seven days, that is, twelve years within three days. This case falls under Construction No. 980, and consequently under the limitation rules is barred. Therefore, ordered, the appeal be dismissed with costs of both courts chargeable to the appellants; the decision of the principal sudder ameen affirmed.

THE 21ST JULY 1848.

No. 339.

Regular Appeal from a decision passed by Syed Ushruf Hosein, Second Principal Sudder Ameen; Mozufferpore, dated 26th of March 1846.

Sheopursun Singh, Surety of the Defendant, (Defendant,) Appellant,

versus

Loll Beharry Singh and four others, (Plaintiffs,) Respondents.

THIS suit is for the recovery of Company's rupees 1,118-1, being the principal and interest of surplus proceeds of auction sale of village Poosahpore, of the portion of 15 gundahs and 1 cowree, within 5 annas, 6 gundahs, 2 cowrees, and 2 krants, the portion of defendants of the first part. The whole village was sold by auction on account of arrears of revenue to the Government, and purchased by Brijbeharry Singh, for the sum of rupees 17,100, on the 16th of October 1837, after confirmation of the auction sale, the balance due to the Government rupees 390-13-5, was

deducted, and in conformity to the orders of the court, the sum of rupees 675-12-9 was paid over to Seeta Ram and others, decree-holders, in which debt the plaintiffs had no concern, the remaining sum of rupees 16,033-5-10, was retained in deposit in the collectorate. The defendants, the late proprietors of the village, on the security of Sheopursun Singh, drew the money out of the Government treasury, through the hands of Hussun Ally and Abool Hossein, their mooktars, who are also included as defendants. Of the above amount rupees 9,000 were deposited in the agency house of Kunhy Chowdree, rupees 6,433-5-10, deposited with Herdeenarain, the son of Meetun Loll, agent, or merchant, 600 rupees were made away with by the defendants, when they, the plaintiffs, demanded their portion; not being paid to them, they applied to the collector, who, on the 16th of May 1844, directed them to sue in the court for their money. A suit was instituted, it was nonsuited on the 15th of March 1845. They now sue anew.

Defendant, Sheopursun Singh, in answer to plaint, acknowledged becoming surety; not having taken any of the money, he has been wrongly included as defendant.

Deenah Singh, one of the principal defendants of the first part, answered, with the consent of all the sharers, the money was drawn out of the collectorate and deposited in a house of agency. Two suits were instituted by the auction purchaser against all the proprietors, in which the plaintiffs were included, and they obtained decrees, in discharge of which proportions agreeably to each sharer's were deducted from the surplus proceeds of the sale. Sheopursun Singh took rupees 3,200 for the discharge of a decree in favor of Futteh Chund Sahoo, with the consent of all the sharers, and Sheopursun Singh has not yet refunded that money. He had not obtained a single pice beyond his own proportionate share. It is requisite that the plaintiff should sue the several sharers according to the portion they had severally taken of his money.

Munorut Singh prayed the answer of Deenah Singh might be considered as his also.

Hussun Ally and Shaik Abool Hossein, under one stamp, pleaded distinctly. Hussun Ally alleged he was a mere attorney on the part of the defendants to draw out the surplus proceeds of the auction sale from the collectorate, and deposited the same in the agency houses of Kunhy Chowdree and Hurdeenarain, who granted receipts of the amount deposited to the proprietors; and that he had not taken any part of the money. Shaik Abool Hossein answered, when the money was withdrawn from the collectorate he was with the magistrate in the interior of the district.

Defendants, Madeih Singh and Sheopurkass Singh, answered: The plaintiffs should sue the sharers in his own portion of the

estate, they are the actual defendants. Being sharers in a distinct portion of the estate, they merely obtained their own shares. The 3,200 rupees taken by the surety, Sheopursun Singh, is still due.

The other defendants, 47 in number, allowed the case to go by default.

The second principal sudder ameen decreed in favor of the plaintiffs against all the defendants conjointly, on the grounds: Not any of the defendants having objected to amount claimed by the plaintiffs from the surplus proceeds of the auction sale. The mooktars and surety having protection of the money, they should have taken care it was properly distributed, and the surety took some of the money; therefore they are also deemed liable with the other defendants.

The defendant, Sheopursun Singh, surety, appealed. Urged the decree against him to be wrong, being merely surety for the collectorate. The sharers within the portion within which the plaintiffs held their shares, are the responsible persons. And in the decision is stated, he had taken some of the money of surplus proceeds of the auction sale, on the evidence of Kunhy Chowdree's agent. He is in enmity with him, therefore made a false representation, and he has no receipt to shew for the money in proof of his assertion.

The defendants, Shaik Hosein Ali, mooktar, Madeih Singh, Sheopurkass Singh, and Mbakoonwur Singh appealed against the decision, urging: The decision then was improper as taking any portion of the money was not proved against them. The sharers within the plaintiffs' own portion of the estate are the delinquents. Themselves are merely made defendants in the way of caution.

COURT.

Both these appeals are against the same decision passed by the second principal sudder ameen. The decision is indiscriminately passed against all the late shares in the village Poosahpore; the surety against the liability of the Government in allowing the former proprietors to withdraw the amount surplus proceeds of the auction sale of the said village; and the mooktars, or agents, who were delegated to withdraw the money, all conjointly; which is contrary to Contruction No. 849, whereby not having enquired into the separate liability of the several defendants, the case has not been sufficiently investigated, therefore the decision is reversed, the case be returned to be re-investigated. To call on the plaintiffs to prove the sum of rupees 6,433-5-10, was deposited with Hudeenarain, which of defendants made away with the 600 rupees, and what sums were taken by the sharers of the distinct putties or portions of the village; and particularly the amount taken by the sharers in his own puttee or portion of the village. To call on Sheopurshun Singh to prove that the sharers of the respective portions of the village received their respective quotas of the surplus proceeds of the auction sale; and particularly the

sharers in the portion in which the plaintiffs were sharers. To call on the agents with whom the money was deposited, when brought from the collectorate, to file a copy of an account from their books of the deposit made, and of the several distinct disbursements therefrom, with the persons' names, dates of payments, and receipts for each payment; if above 50 rupees, they should be on stamp, conformable to the amount; a copy of the account should also be filed in Oordoo; and they should produce their original books of accounts in order that the court may scrutinize the same to ascertain whether the books be genuine, and no leaves have been inserted therein to falsify the accounts; and to summon a gomastah of another agency to declare whether the accounts filed agree with the books, and that books are kept correctly. To call on the defendants, who have answered the plaint, to prove their several allegations. To take into consideration which of the defendants are liable, and whether or not from the tenor of security bond Shcopurshun Singh is liable, and to pass a decision agreeably to the merits of the case, and in conformity to Construction No. 849. The amount of stamp of both appeal plaints to be returned to the appellants respectively.

THE 24TH JULY 1848.

No. 773.

Regular Appeal from a decision passed by Moulvee Syed Mahomed Mohamid Khan, Sudder Ameen of Mozufferpore, dated 17th of September 1845.

Hurree Ram Tewaree, auction purchaser, (Plaintiff,) Appellant,

versus

Achumbit Raie and four others, of the first part, Nurkoo Rae and six others, of the second ditto, Munhoge Rae and two others, of the third ditto, and Joygopaul Rae and five others, of the fourth ditto, (Defendants,) Respondents.

THIS suit was instituted by the appellant against the respondents for the possession and mutation of his name in records of the collectorate, and for the partition of the revenue and land of 2 annas portion within the whole 16 annas of the village Rampore Anunt *alias* Bhutoleeah, purgunnah Ruttee, together with mesne profits. Action laid at Company's rupees 974-9.

This case came on appeal, investigated, and decision thereon passed by this court on the 21st of June 1847, *vide* the printed Decisions of the zillah courts, for the month of June 1847, page 145 and following pages.

The appellant, dissatisfied with the decision of this court, preferred a special appeal to the Sudder Dewanny Adawlut, which

Court, arising from the indefinite decision of this court, reversed it, and directed inquiry to be made, to what portion of the village the appellant had a right, &c.

COURT.

On re-perusal of the papers it appears from the collector's proceedings dated 30th of December 1816, that, on the death of Neermul Rae, who held possession of 5 annas and 4 pie, an application was made for the mutation of that property in the names of the applicants, Sheodyal Rae, the son, Bundoo Rae, the brother, and Bustec Rae, the nephew, and heirs of the deceased, in equal portions of one-third to each,—the usual proclamations having been issued for more than a month, inviting objections to the application to attend and make them known. No objection having been made, the names of the applicants agreeably to the request, were directed to be recorded in the mutation book. On the 3d of Bysak 1232 Fuslee, corresponding with 6th of April 1825, Sheodyal Rae, as proprietor of 2 annas of the village, pledged that portion in the surety bond, for the due discharge of the rents of the village Ahyahpore by the farmer thereof, Munraj Koonwur. A solanamah filed in the case, dated the 6th of February 1826, purports to state that there was a dispute in the foudjdarce regarding shares in the village, in the case of Munnoge Rae, plaintiff, *versus* Sheodyal Rae, defendant, that arbitrations had been appointed, who coming to no decision, they had adjusted the matter themselves—Sheodyal Rae agreeing to give up one-third of his portion of 1 anna 9 pie to Munnoge Rae, and one-third to Deega Rae and Gouree Rae, sons of Preim Rae, retaining one-third himself. This deed being entered into near a year after that of the surety bond, seems to be a fraudulent measure to defeat the object of surety bond: the solanamah cannot be considered of any validity in this case. The portion held by Sheodyal Rae, at the time the sale of his property was effected in execution of decree of court, was 1 anna and 9 pie, to which portion the putwarees' jumma-bundee shews he was entitled. To the portion of 1 anna and 9 pie, the appellant appears to have been entitled by his auction purchase, but while he was considering to sue regularly for the portion purchased at auction, the whole village was sold for arrears of revenue due to the Government, and purchased by Fukeerah Singh: when this sale was confirmed, the former proprietors recovered back the village from the auction purchaser under ekrnamah, or written agreement, from that person. The defendants (respondents) contend the appellant's name not being inserted in the agreement as being one of the purchasers, he has no claim to a share subsequent to the auction sale of the village on account of arrears to the Government. In the agreement written by Fukeerah, after the insertion of a number of names the term "wughuyra" is used,

which purports, "and all the other sharers," consequently he was admitted in the same position he was entitled to, previous to the auction sale of the whole village. In the discharge of the money for the re-purchase of the village, the appellant in the plaint of this case declares similarly to the other sharers, he paid his quota rupees 131-4, for his share of 2 annas, to Achumbit Rae; that he has not established, consequently is not entitled to any share or portion on the village. Therefore, ordered, the appeal be dismissed, with costs of both courts chargeable to the appellant; the decision of the sudder ameen is affirmed.

THE 25TH JULY 1848.

No. 633.

Regular Appeal from a decision passed by Moulvee Mahomed Mohamid Khan, Sudder Ameen, Mozufferpore, dated 11th of August 1845.

Bhurt Singh and seventeen others, (Plaintiffs,) Appellants,

versus

Hurruk Takoor and forty-nine others, (Defendants,) Respondents.

THIS suit was for the possession of 19 beegahs of alluvion land appertaining to the village Rampore Kisho *alias* Mhulahee, pergunnah Ruttee, together with half of the river Bhyah, and mesne profits thereof from 1249 to 1250 F. S. Action laid at Company's rupees 506-10.

The case was investigated and dismissed by the sudder ameen on the above date, on grounds, the plaintiffs had not established their plaint.

On appeal, this court reversed the decision of the sudder ameen, and passed a decree for the appellants (plaintiffs) for 7 beegahs and 19 biswas, ascertained by ameen being annexed to the lands of the appellants' village, therefore appertaining to them, without mesne profits. The respondents within the prescribed period presented a petition, praying for a review in the matter of costs, and hoped to be relieved from so much thereof as was beyond the limits of the decree, the application having been submitted to the Sudder Dewanny Adawlut, that Court having granted permission to review the decision, the attorneys of both parties being in attendance; on review of the matter it appearing near one-third only of the quantity of land sued for, was decreed, without specifying therein the customary mitigation of costs in consequence thereof, therefore, it is ordered, that conformable to usage of the courts, the respondents be liable to costs only to the extent of the decree, the remainder of the costs the appellants are liable to, and also to the costs of this reference or appeal.

THE 25TH JULY 1848.

No. 810.

*Regular Appeal from a decision passed by Kazee Mahmood Allum,
Moonsiff of Coylee, dated 27th October 1846.*

Musst. Suddoo Koonwur, (Plaintiff,) Appellant,

versus

Bhyjoo Uppudeeah, vendor, Gujadhur, his son and Musst. Kurreemulnessa, widow of Saheeb Deen Khan, (Defendants,) Respondents.

THIS suit was for possession and mutation of her name in the records of the collectorate, and also for the partition of the revenue and land of half an anna within the whole 16 annas of the village Surkowlee, pergunnah Mhylah, zillah Toorkee. Action laid at Company's rupees 23-8-1½.

Purport of the plaint is: having formerly sued to be put in possession of the half anna of the village abovementioned, which the plaintiff had purchased from Bhyjoo Uppudeeah, under bill of sale, dated 28th November 1844, the defendants having acknowledged the sale, a decree was passed in her favor on the 8th of September 1845. Musst. Kurreemulnessa, the widow of Saheeb Deen Khan, as a third party, appealed against it. The second principal sudder ameen dismissed the case under Act XXIX. of 1841. Therefore, sue anew.

The vendor and his son both acknowledge the bill of sale.

Defendant, Musst. Kurreemulnessa, answered, she had purchased the half anna by bill of sale and obtained a registry of the deed; the plaintiff and the vendor have collusively written another bill of sale for the said property to cheat her thereof.

The moonsiff dismissed the case, on the grounds: the bill of sale of the plaintiff being without the impression of the seal of the kazee and the signature of the register, is invalid under the 1st and XIXth Acts of 1843; although the bill of sale to Musst. Kurreemulnessa is of a subsequent date, being registered, is valid.

The plaintiff appealed against this decision, urging that both in the former and present case, the vendor acknowledged the bill of sale, and it was on appeal only the former case was struck off the file, under XXIXth Act of 1841; sundry bills of sale have been without any registry, on evidence of witnesses have been deemed valid, and her bill of sale having been acknowledged by the vendor proves its validity.

Respondent, Musst. Kurreemulnessa, appointed an attorney and prayed the reply under No. 811 may be considered answer to this also.

COURT.

The decision of the moonsiff being in conformity to Acts I. and XIX. of 1843, must be upheld; therefore, ordered, the appeal be dismissed, and the decision of the moonsiff is affirmed; the costs of both courts chargeable to the appellants.

THE 25TH JULY 1848.

No. 811.

Regular Appeal from a decision passed by Kazeo Mahmood Allum, Moonsiff of Coylee, dated 27th of October 1847.

Musst. Suddoo Koonwur, (Plaintiff,) Appellant,

versus

Bhyjoo Uppudeeah, vendor, Gujadhur Uppudeeah, his son, and Beekun Khan, the husband of the sister of Saheeb Decn Khan, (Defendants,) Respondents.

AMOUNT of the action of this suit is laid at Company's rupees 48, was for the possession of half an anna portion of the whole 16 annas of village Pursonee Khcerodur, purgunnah Mhy-lah, zillah Toorkee.

This suit is similar in every respect as the foregoing No. 810. The decision of the moonsiff and of this court also are similar to that of No. 810.

THE 25TH JULY 1848.

No. 136.

Kazeo Mahmood Allum, Moonsiff of Coylee, dated 15th January 1847.

Musst. Suddoo Koonwur, (Defendant,) Appellant,

versus

Beekun Khan, (Plaintiff,) Respondent.

AMOUNT of action of this suit is laid at Company's rupees 48, and the suit was for the possession and mutation of his name in the records of the collectorate of half anna portion of village Pursonee Kheerodur, purgunnah Mhy-lah, zillah Toorkee, purchased from Bhyjoo Uppudeeah, for the sum of rupees 301, under bill of sale, dated 5th of March 1845, and duly registered; application for mutation was made, but owing to Musst. Suddoo Koonwur having fabricated a bill of sale for the said land, and antedated and sued for possession thereon, therefore this suit is instituted.

Musst. Suddoo Koonwur, defendant, pleaded her bill of sale for the said land, is dated 28th November 1844, is of a prior date to that of plaintiffs, which he has deceitfully caused to be written.

The defendant, Bhyjoo Uppudeeah, the vendor, and his son have allowed the case to go by default.

Moonsiff passed a decision in favor of plaintiff, on the ground the evidence of the subscribing witnesses to, and the registry thereof, prove bill of sale to be authentic and claim established.

The defendant, Musst. Suddoo Koonwur, appealed, urging: the registry of a bill of sale does not prove its validity; for many so circumstanced have been deemed invalid, and many not registered have been proved valid; such of the subscribing witnesses to the bill of sale, as were under the influence of the plaintiff, were adduced to give their evidence, and those that were not, were not brought forward.

COURT.

The objections of the appellant are frivolous and arise from the dismissal of her own suit for the same property. And there being no cause to interfere with the decision of the moonsiff, ordered, the appeal be rejected, and the decision of the moonsiff be confirmed.

THE 25TH JULY 1848.

No. 137.

Regular Appeal from a decision passed by Kazeer Mahmood Allum, Moonsiff of Coylee, dated 15th July 1847.

Musst. Suddoo Koonwur, (Defendant,) Appellant,
versus

Musst. Kurreemulnessa, (Plaintiff,) Respondent.

AMOUNT of action is laid at Company's rupees 23-8-1½, the suit for possession and mutation of name in the records of the collectorate of half anna portion of village Surkowlee, pergunnah Mhylah, zillah Toorkee, purchased from Bhyjoo Uppudeeah for the sum of rupees 401, under bill of sale duly registered.

This suit is similar in every respect as the foregoing No. 136. The decision of the moonsiff and of this court also similar to that of No. 136.

THE 29TH JULY 1848.

No. 818.

Regular Appeal from a decision passed by Kazeer Mahmood Allum, Moonsiff of Coylee, dated 9th November 1846.

Durgaduth and eight others, (Defendants,) Appellants,
versus

Nuckcheid Chowdree *alias* Purmanunth Chowdree and Madenauth Chowdree, (Plaintiffs,) Respondents.

THE amount of action was laid at Company's rupees 253-12-3, being 18 times the rent roll of the land under dispute. The suit

was for the possession of 8 beegahs, 16 biswas, and 3 dhoors, being a portion of 101 beegahs of minhye, or land exempt from revenue, situate in the village Juggut, purgunnah Nowton, and the reversal of proceeding of settlement of the said land, dated 30th of March 1841.

The purport of the plaint is: there were 101 beegahs of lakhiraj in the above mentioned village appertaining to Eshreeduth Jha and Khant Jha; the officers of Government attached it for the purpose of assessing the same, and proved on measurement to be 101 beegahs and 3 biswas; Durgaduth Jha and others, proprietors of the revenue land of the village, claimed 8 beegahs, 16 biswas, and 3 dhoors thereof as a part of their revenue land; that quantity was excluded, and a settlement for the remainder was effected with the abovementioned minhyedars, who sold to the plaintiff the whole of the land exempt from revenue and 6 beegahs beside, under a bill of sale dated 28th of Maugh 1250 Fuslee; therefore sue and are ready to pay the revenue thereon to the Government.

Answer on part of Government. The former holders of land exempt from revenue, not having established their right to the 8 beegahs, 16 biswas, and 3 dhoors, it was excluded, and the settlement was effected for remainder. If the claim of the plaintiffs be decreed to them, the settlement will be made with them.

The defendants, Durgaduth Jha and others, proprietors of the village, urged: the plaintiffs should have sued for the reversal of the settlement within one year, it is instituted after a lapse of five years; the land under dispute is revenue land, and for such as was ascertained to be exempt from revenue, a settlement was made, and no appeal was made to the commissioner.

Answer of the Minhyedars. Previous to the settlement 101 beegahs were in their possession, owing to the proprietors of the village having made a claim to the disputed land, it was excluded from the settlement; having fallen ill, therefore not able to take care of the land, they sold their lakhiraj land and 6 beegahs beside to the plaintiff.

The moonsiff passed a decree in favour of the plaintiffs on the grounds: From the decision passed by the moonsiff of Mudehpore, dated 14th February 1834, it appeared that 101 beegahs of land exempt from revenue belonged to the former minhyedars, and they were in possession. The Government are exempted, and the settlement will be effected with the plaintiffs.

The defendants, the proprietors of the village, appealed, urging: The decision taken by the moonsiff in proof of the claim of respondents, was appealed against, and was returned for re-investigation, and that case decided in their favour, thereby shewing the decision seized as proof; is of no utility. For the quantity of

land that was proved to be exempt from revenue, a settlement was made with the minhyedars, no further land belong to them.

Respondents answered: The decision dated 14th February 1834, proceedings of the judge in a miscellaneous case dated 14th August 1843, and proceeding of the foudaree dated 10th of May 1842, which are filed in the case, prove their claim. The objections urged by the appellants were all enquired into in the original case and set aside.

COURT.

This case is for a parcel of land excluded from the settlement effected with the rent-free holders, by the special deputy collector, against whose award the party dissatisfied should have appealed to the court of special commissioner, the ordinary courts having no jurisdiction in settlement cases under the 4th and 5th Clause, 2d Section, III^d Regulation of 1828, therefore the decision of the moonsiff is quashed, and the respondents chargeable with the costs of both courts.

THE 31ST JULY 1848.

No. 91.

*Regular Appeal from a decision passed by Mr. Samuel Dacosta,
Moonsiff of Teighra and Begoo Serrai, dated 5th
December 1846.*

Jotee Rae and two others, (Plaintiffs,) Appellants,
versus

Anatee Rae, vendor, Meerban Rae, and four others, (Defendants,) Respondents.

THIS suit was for possession and mutation of their names in the records of the collectorate of half an anna within 17 gundahs portion of the whole 16 annas of village Yadgarpore, Pergunnah Mulkee, and the reversal of proceeding of the collector of Monghyr, dated 28th May 1846. Action laid at Company's rupees 9.

The plaint states 3 annas and 11 gundahs of the said village was acquired by Dheo Rae and Edul Rae, were own brothers and shared equally half and half.

Anatee Rae and Meerban Rae are brothers and heirs of Edul Rae. In 1211 the ten years' settlement was effected, and the name Meerban Rae was entered in the mutation book, and all were in possession on the estate. Anatee Rae within his own share of 17 gundahs, sold 10 gundahs thereof to the plaintiff under bill of sale dated 2d October 1845, agreeing with 19th of Assin 1253 Fuslee, for the sum of 100 rupees. Petition was filed in the collectorate for mutation of the purchase; the deputy collector passed

an order for the mutation, whereon Meerban Rae appealed to the collector, who reversed the order of his assistant. The plaintiffs' names not being entered in the mutation, therefore sue.

The defendant, Anatee Rae, acknowledged the sale by bill of sale.

Meerban Rae answered : 3 annas and 11 gundahs were acquired by Dheo Rae only, under whose name it remained until his death, then in the possession of his two sons Bhola Rae and Bhowun Rae ; after their death, their widows, Musst. Bugwanoo Koonwur and Musst. Doona Koonwur, who having adopted him, caused his name to be recorded in the mutation book, from which period he has been in regular possession alone, without any other person. Similar answer to this was filed by Musstn. Bugwanoo Koonwur and Doona Koonwur.

Duryah Singh and five others filed a third party petition ; it was similar to the answer of Meerban Rae.

A proprietor, Motee Rae, filed a third party petition, urging that the claim of the plaintiff was correct.

The moonsiff dismissed the case on the grounds : The evidence of the defendants' witnesses proved neither the vendor nor his father ever held possession in the village, and that a difference in the evidence of the plaintiffs' witnesses, and the portion held by the vendor was not established.

The plaintiffs appealed, urging : From the enquiry made by the assistant collector, it was proved the vendor held possession ; Meerban Rae obtained the mutation of his name in the records of the collectorate as heir to his father Edul Rae, and not under adoption as son by the widows.

COURT.

It appears previous to the completion of the evidence of the third witness on the part of the plaintiffs, the day closing, the case was postponed, and never called up again to complete his evidence. A report filed in this case under the signatures of the putwarree and others seems to have escaped the notice of the moonsiff. Hence the investigation is incomplete, therefore, ordered, the decision of the moonsiff be reversed and case sent back for re-investigation. To call on the plaintiffs to file copy of the assistant collector's proceedings of the mutation enquiry, and copy of proceeding on the mutation of the name of Meerban Rae in the record of the collector ; to cause the attendance of the third witness, Bopal Singh, to complete his evidence, and also to cause the attendance, by subpoena of the court, of the putwarree and others who signed the report filed in the case, and to take their evidence on the matter of the report on the customary oath ; and to call on the defendants to prove the allegations in their answer to plaint ; and to call for any further documents or evidence of witnesses that may appear

during the re-investigation necessary. Having completed the re-investigation, to pass a decision according to the merits of the case. Amount of stamp of appeal plaint to be returned to the appellants.

THE 31ST JULY 1848.

No. 219.

Regular Appeal from a decision passed by Moulvee Syed Eradut Ali, Moonsiff of Mozufferpore, dated 23d of February 1847.

Mr. G. D. De Silva, (Defendant,) Appellant,

versus

Mrs. Nicholas, (Plaintiff,) Respondent.

ACTION laid at Company's rupees 110, the price of a mare.

The plaintiff states she purchased, at the Chutter fair, two mares and four horses, for re-sale, on return from the fair; there not being sufficient room in her own stable, with the consent of the defendant, she sent one horse and one mare to his stable; after the erection of a stable, she sent for them back, the defendant returned the horse but not the mare; whereon a complaint was preferred to the magistrate, who directed to sue in the civil court: hence this suit.

Defendant pleaded that the plaintiff asked him to procure a loan on her account to purchase horses at the Chutter fair, on a trading speculation for re-sale; she would admit him in the share of half the profits; he obtained the loan of 1,000 rupees from Brijbeeharee Loll, on her account, and was appointed her agent for the registry of the bond. He accompanied her to the fair, had the trouble to purchase on her account five horses and two for himself. It was in the power of the plaintiff to have gained a profit on the re-sale of the horses at the fair, but declined for the purpose of gaining a greater profit from the sale of them at Calcutta. Having requested her to give him the profit which was available at the fair, she unjustly complained in the Foujdaree, where it was dismissed, now sues in this court.

The moonsiff passed a decree in favor of the plaintiff, on the grounds: the defendant did not by any document or evidence prove his partnership or compensation, and the plaintiff has by evidence of witnesses and the foujdaree papers proved her claim.

The defendant appealed, urging the horse was not forcibly taken from her, it was purchased on his own account, which the moonsiff did not make enquiry into, but, on the deposition of Brijbeeharee Loll alone, passed an erroneous decision.

COURT.

The appellant, in his answer to the plaint, does not deny a mare and a horse went to his stable, and that he did not detain the mare; but makes some frivolous excuses, foreign to

these points, and declares the mare was purchased on his own account. His objection to the evidence of Brijbeeharee Loll is also frivolously urged: for he himself proposed the appointment of Brijbeeharee Loll as an arbitrator for the adjustment of the dispute, to which the respondent objected, owing to his having sued her for 1,000 rupees, but agreed to his giving evidence in court, which being consented to by both parties, his evidence was given in open court, which was altogether in favor of respondent. Therefore, ordered, the appeal be rejected, with costs of both courts chargeable to the appellant, the decision of the moonsiff, as far as it regards to this case, affirmed.

THE 31ST JULY 1848.

No. 218.

Regular Appeal from a decision passed by Moulvée Syed Eradut Ali, Moonsiff of Mozufferpore, dated 23d of February 1847.

Mr. G. D. DeSilva, (Plaintiff,) Appellant,

versus

Mrs. Nicholas, (Defendant,) Respondent.

THE amount of action is laid at Company's rupees 100, being the half portion of profits and compensation that might have been available if the re-sale of two horses had taken place at the Chutter fair.

Purport of the plaint: Having been requested by the defendant to endeavour to effect a loan of money on her account for the purpose, to purchase horses at the Chutter fair, with an understanding she would admit him, the plaintiff, to half share of the profits on re-sale of the horses,—having procured a loan of rupees 1000 for the defendant from Brijbeeharee Lall, and obtained the registry of the bond by her appointment as mooktar, and purchased for the defendant five horses and two on his own account, he, the plaintiff, is entitled to his profit and compensation. Offers of 600 rupees were made at the fair for the re-sale of two of the horses, as detailed below, they cost 400 rupees, which would have yielded a profit of 200 rupees; the defendant declined the offers, with a view to obtain a larger profit by the sale of the horses at Calcutta; not wishing to await the result of the sale of the horses at Calcutta, requested payment from defendant, of the profit and compensation that was available at the fair, from the tender made for the two horses, whereon the defendant complained in foudjaree, which was dismissed.

The defendant, in her answer, pleaded: The plaintiff states he was admitted to half share, of the profits, which is false; if there had been any such understanding, a deed to that effect would have

been written. The money was borrowed from Brijbeeharee Lall, and the plaintiff was appointed to effect the registry of the bond by mooktarnamah, which does not give him any claim to the profits on the re-sale of the horses. Having sued the plaintiff for one of the horses, of the six purchased at the Chutter fair, retained by him, is the cause of this suit.

The moonsiff dismissed this suit, on the grounds that the plaintiff adduced no document or evidence of his partnership in the profits.

The plaintiff appealed, urging : Having exerted his best endeavours in purchasing horses for the respondent, and not being her servant, he is entitled to compensation for his labor, to which the moonsiff did not make any enquiry.

COURT.

The plaint is a confused mixture of claim for profit compensation, and not clearly worded, for profit and compensation. The appellant has not established his claim to profit, and the respondent, as defendant, does not deny the purchase of the horses was effected by the appellant, hence there is a seeming claim to some compensation by the appellant, which not having been enquired into, by the moonsiff, the investigation is incomplete. Therefore, ordered, the decision of the moonsiff regarding this case be reversed, and the case be returned for re-investigation, to call on both parties to shew the customary compensation paid to persons for selection and purchasing of horses, on account of another, whether the compensation be made on each horse, or on the amount paid for each horse, and at what rate—each party to adduce witnesses, who are horse dealers, or have had dealings of this nature, with the exception of Brijbeeharee Lall ; having re-investigated the matter as above indicated, to pass a decision, agreeably to the merits of the case. The amount of stamp of the appeal plaint to be returned to the appellant.

ZILLAH TWENTY-FOUR PERGUNNAHS.

PRESENT : ROBERT TORRENS, Esq., JUDGE.

THE 21ST JULY 1848.

Appeal from a decision passed by Moulvee Myenooddeen Sufdur, late Additional Principal Sudder Ameen, on the 30th of June 1847.

Pearreeloll Mundul, (former Defendant,) Appellant,

versus

Ram Chand Bundopadhya, (former Plaintiff,) Respondent.

FOR the reversal of an order of the lower court, saddling the appellant with his own costs, rupees 90, 9 annas, 8 gundahs.

The plaintiff in the lower court had sued in *forma pauperis*, for possession of 25 beegahs, 12 cottahs of birmooter, debooter, and lakhiraj land of other designations, which he stated the defendant (appellant) had dispossessed him of. Others were made defendants in the case, because they were the partners of Pearreeloll Mundul. When the case came on for trial, the additional principal sudder ameen nonsuited the plaintiff, for four reasons mentioned in his *fysala*, all of which show that the nonsuit was the consequence of the plaintiff's errors. No fault was found with the (defendant) appellant in the lower court's decision; and this being the case, the appellant submits that it is unjust to saddle him with any costs. I concur with the appellant; he was not to blame when the case was nonsuited; and the respondent must be held liable for the appellant's costs, instead of the appellant having to pay them. I decree this appeal accordingly.

THE 21ST JULY 1848.

Appeal from a decision passed by Moulvee Myenooddeen Sufdur, late Additional Principal Sudder Ameen, on the 30th of June 1847.

Julloo alias Gunganarain Banerjee, and Mooktokaisee Debea, widow of Seeb Chunder Banerjee, (former Defendants,) Appellants,

versus

Ram Chand Banerjee, (former Plaintiff,) Respondent.

FOR the reversal of an order of the lower court, saddling the defendants with their own costs, rupees 85-15-8.

In this case the appellants were defendants along with the appellant mentioned in the preceding case, and they appeal under similar circumstances. No fault or blame can be ascribed to these appellants in the case nonsuited by the additional principal sudder ameen. That nonsuit ensued because of the errors of the plaintiff. It is not just to saddle the appellants therefore with costs in that case, and respondent must pay the costs incurred by the appellants. I therefore decree this appeal.

THE 21ST JULY 1848.

Appeal from a decision passed by Moulvee Myennooveen Sufidur, late Additional Principal Sudder Ameen, on the 15th of July 1847.

Gungagövind Mundul, (former Defendant,) Appellant,

versus

Joodishtee Mundul, (former Plaintiff,) and Sreedhur Haldar, and others, (former Defendants,) Respondents.

FOR the reversal of the order of the lower court, saddling the defendant (appellant) with costs, rupees 184, 7 annas, 8 gundahs.

The plaintiff sued the defendants, Sreedhur Haldar and others, who were ryots holding possession of his tenure, (consisting of 47 beegahs, 10 cottahs, situated in pergunnah Azeemabad, mouzah Oodyerampoor,) for re-possession of the same. He sued the defendant (appellant) because he was the zumeendar, and because, having colluded with the ryots, he would not permit the plaintiff to take possession of the ground and to cultivate it. The plaintiff alleged that he held the ground up to the year 1240 B. S., when, in consequence of the inundation of salt-water, he left it for a considerable time, and made it over to the defendants, the ryots.

The defendants, the ryots, only replied in the lower court. They said that for several years the plaintiff had abandoned the grounds, and remained absent, when the zumeendar leased the land to them, in virtue of which they still hold it. The zumeendar, the appellant, did not appear in the lower court.

The additional principal sudder ameen awarded possession of the land to the plaintiff. He held the ryots responsible for their own costs, and he held the zumeendar, (the appellant,) liable to pay the plaintiff's expences as well as his own.

The appellant submits in appeal that there was no just cause to saddle him with the plaintiff's costs, and assigns reasons for allowing the other defendants to till and possess the ground, which the plaintiff had abandoned. He submits that the Circular Order of the 12th of March 1841, cannot be held as a bar to his appealing, as the lower court's order, in respect to him, was illegal, and there had existed no necessity for him to appear therein.

The ryots, the other defendants, put in an answer to the petition of appeal, and submit that there was no reason to make them respondents in this case.

Had the appellant appeared in the lower court and answered, I should have exonerated him from costs, for I consider that when the plaintiff abandoned his tenure (for many years, as it appears) the zumeendar acted with a due consideration for his just rights when he leased the ground to other ryots; but the plaintiff asserts that this appellant, *colluding* with the other defendants, the ryots, had ousted the plaintiff, and prevented his tilling his land. To such a statement it was, in my opinion, quite requisite for the appellant to appear, and answer, and to disprove; and he cannot be permitted to judge of the propriety of his not answering to the plaintiff. His not doing so was clearly wilful and intentional, and I do not consider that I have any other course to follow, in this case, but to dismiss the appeal, which I do in conformance with the Circular Order of the 12th of March 1841. I hold the appellant liable for all costs of this appeal, besides those he has been called on to pay by the lower court's decision.

THE 24TH JULY 1848.

Appeal from a decision passed by Moulvee Myennoodeen Sufdur, late Additional Principal Sudder Ameen, on the 16th July 1847.

Nazir Khan Chowdry, Dowlut Khan Chowdry, and Munour Khan Chowdry, (former Defendants,) Appellants,

versus

Damooder Chunder Roy Chowdry, for self and guardian of Belwareeloll Roy Chowdry and Moorareeloll Roy Chowdry, minor sons of the late Rughoonath Roy Chowdry, Chundermohun Roy Chowdry, for self and guardian of Kistennath Roy Chowdry, minor son of the late Domun Singh Roy Chowdry, and Kesubchunder Roy Chowdry, Behareeloll Roy Chowdry, Subbo Chunder Roy Chowdry, and Essan Chunder Roy Chowdry, (former Plaintiffs,) Respondents.

FOR rupees 1,007, 4 annas, 10 gundas, on account of arrears of rent.

The plaintiffs instituted this case to recover arrears of rent, including interest, due from the defendants, Dowlut Khan and Munour Khan, for rent of land in mouzah Gunputtappoor, pergunnah Kalarowah Hosseinpoor, from the year 1247 to 1253. The plaintiffs had sued Kuldem Khan and Adooree Beebee, the minor brother and sister-in-law of the two defendants, (who are also holders of the land,) but in a supplementary plaintiff they with-

drew their claim against those persons on account of their minority, and, in the same supplementary plaint, sought to have the entire tenure for which the arrear was due held liable for it. The defendant, Nazir Khan, was sued because he is, plaintiffs state, the benamce, or pretended, holder of the land for which rent is due, and had been upheld in possession of it by a decision of the foudjaree court, passed under Act IV. of 1840.

In answer the defendants, Dowlut and Munour, say that they do not hold the land. Their father, Asur Khan, in Falgoun 1247 sold the ground to Nazir Khan, and he, on the 5th of Assin 1253, paid the whole of this claim except rupces 41, 15 annas, 3 gundas, which were remitted to the gomashtah of the plaintiffs, in the presence of their nyeb. The reason of the money being paid after the case was instituted, was that the defendants were ignorant that any action had been brought against them, the required notice and proclamation not having been duly served and notified. The defendants produced the receipt of the gomashtah, counter-signed by the plaintiffs' nyeb.

The additional principal sudder ameen decreed the whole sum claimed, to be paid by Munour, Dowlut, and Nazir Khan, and he held the tenure for which the arrear was due liable for its recovery.

The appellants repeat the statements made in the lower court, and urge that the payment of the money to the gomashtah of the plaintiffs was duly proved by the evidence in that court.

This was a claim for arrears of rent due for several years, from 1247 to 1253 inclusive, which one of the defendants, (appellants,) Nazir Khan, states that he paid *after* the institution of the suit in the lower court to the plaintiffs' gomashtah. The witnesses, Roopoeah Sirdar, Chand Ghazee, Jan Mahomed, Goburdhun Sirdar, and Kissobe Sircar, proved that Dowlut Khan and Munour Khan succeeded their father, Asur Khan, in the tenure, and are now the holders of it. Nazir Khan's purchase and tenure of the ground is, from their evidence, plainly to me a fiction. The defendants adduced three witnesses to prove that the payment was made by Nazir Khan, on the 5th of Assin 1253 B. S., as alleged by them, after the institution of this action. This is a most improbable story: It is not credible that after quarrelling and litigating for several years, as the plaint states the parties had done, any of the defendants would, subsequent to the institution of this case, go to the plaintiffs' cutcherry and pay the money. As to the defendants not knowing that the action was instituted, I observe that the prescribed notice and proclamation appear, from the returns thereto, to have been duly issued. The witnesses, Kaim Sheik, Golam Kadir, and Mooluk Ghazee, swear in their depositions that the receipt produced by the defendants was given as they allege,—the money, rupees 1,000, having been paid to the plaintiffs' gomashtah. The two first witnesses say that a large portion of the money paid

was principal, and rupees 281, 13 annas, 13 gundas, 5 kowrees, was interest, yet they say no written accounts were referred to in making out this account extending over so many years. The third witness says that written accounts were referred to; he stated the particulars of the years the rent was due for, and the respective sums of principal and interest, but, on being cross-questioned, he alleged that the years preceding the year 1217 (when the arrear first became due) were 1246 and 1248. All the three witnesses live a long distance from the place where the money was said to have been given, and have not satisfactorily accounted for their being there at the time of payment. I consider that an important claim, such as this is, cannot be preferred in court without its being well known to all the neighbouring residents of the parties, as well as to themselves, even if the prescribed notice and proclamation had not been sent out. If the payment were made after the case had been instituted, the money ought to have been, in the first case, paid into court. No deed of sale to Nazir Khan of the ground for which rent is claimed, has been filed. The copy of the decision according to Act IV. of 1840, is the only document put in, in support of this statement; and I consider that summary and imperfect proceeding insufficient to prove Nazir Khan's possession in or title to the land. No attempt is shown to have been made to get his name recorded in the zumeendar's archives. The lower court decided erroneously, I conceive, in awarding the whole amount claimed. The respondents' pleader admits that the tenure (440 beggahs, 5 cottahs) for which rent is claimed, is held in equal proportions by the two defendants, Munour and Dowlut, as well as by the minors, Kuleem Khan and Adoorce Beebec. In the supplementary plaint filed in the lower court, the plaintiffs withdrew their claim against Kuleem and Adoorce. This having been done, no award can be passed for the share of the rent (which is one half of this claim) due by them. Nor should the additional principal sudder ameen have decided that the tenure itself is to be held liable for this claim. Thus to decide was holding the property of the minors responsible for the plaintiffs' demand, after they had signified their withdrawal of their demand against them. Besides the plaintiffs, in their plaint, did not seek to have the land held liable for this claim. They merely sought to recover the rent due by their tenants. A supplementary plaint can only be admitted to correct errors and supply omissions, but not to alter or enhance the thing sued for, as this supplementary plaint seeks to do. I therefore modify the lower court's order by decreeing only half the rent claimed against Munour and Dowlut Khan. As Nazir Khan has opposed the plaintiffs' claim, I hold him, as well as Dowlut and Munour, responsible for the costs, in the proportion which the amount decreed bears to the original claim.

THE 27TH JULY 1848.

Appeal from a decision passed by Mahomed Ruffee, Moonsiff of Bishenpoor, on the 25th May 1848.

Saum Chand Kyal, (former Plaintiff,) Appellant,

versus

Atyaram Ghurrammee, Gungaram Ghurrammee, and Durponarain Haldar, (former Defendants,) Respondents.

FOR rupees 61, 7 annas, due on a bond, including interest.

The plaintiff alleged that the defendants, on the 6th of Srabun 1252, borrowed from him the sum of rupees 50, on a bond of that date. They have not discharged the debt, and he now seeks to recover the interest and principal.

In answer Atyaram urged that he or the other two defendants never borrowed any money as set forth; the claim has been mooted only from feelings of animosity, which the plaintiff bears against defendants in consequence of a suit which one of plaintiff's relations had brought against these defendants, and wherein the said relation was defeated. The defendant further alleges that he was not at plaintiff's house where the transaction was said to have taken place, but at Bahirbund, in the Soonderbunds, and puts in a document and evidence in support of this statement.

The moonsiff credited the evidence of defendant's witnesses, and considered it was proved that he was, as he stated, at Bahirbund.

The plaintiff appeals, and submits that his evidence bears out the claim he has made. He alleges that the moonsiff could not legally hear the evidence of defendant's witnesses, because the defendant's answer was filed after the plaintiff had filed his exhibits.

The evidence put in by the defendant proved that he was at Bahirbund when the bond bears date. He supports this by filing a souda putter, for ten rupees lent to him, or advanced, on the 24th of Assar 1252, for wood to be cut and provided by the defendant for that person. The plea that the moonsiff could not hear defendant's witnesses, because the answer was filed after the exhibits of the plaintiff is immaterial, for the Sudder Court, in a letter

* To my address.

No. 1411,* dated the 17th of September 1845, have ruled that a reply and rejoinder may be filed if tendered before witnesses of plaintiff are examined and the exhibits filed. I see no necessity for admitting this appeal.

THE 27TH JULY 1848.

Appeal from a decision passed by Mr. J. Weston, Sudder Moonsiff, on the 29th May 1848.

Kaleepersaud Chatterjee, (former Plaintiff,) Appellant,
versus

Sreedhur Kopalee, (former Defendant,) Respondent.

FOR 59 rupees, 10 annas, 8 gundas, due on a bond, including interest.

The plaintiff says that the defendant, on the 12th of Aughun 1251, borrowed from him 50 rupees, and gave a tumsook for that amount. He paid rupees 3, interest, but having defrayed no more, the plaintiff has recourse to this suit to recover the remainder of the debt.

The defendant denied ever having incurred the debt, and states that it is preferred because the plaintiff is his enemy.

The moonsiff dismissed the case, as the plaintiff could not produce any accounts showing that he had lent this money to the defendant, who was a perfect stranger to plaintiff, and notwithstanding that he alleged he had money transactions with various individuals. He remarked that it was a stipulation in the bond that any payments were to be endorsed on the deed, and he was further induced to decide against the claim on account of the witnesses of the plaintiff having spoken inconsistently.

The plaintiff, in his petition of appeal, merely repeats his statement made in the lower court, and urges that the evidence of his witnesses showed the demand to be a just one.

On consideration of this case I see no reason to differ with the lower court, and decline to admit this appeal.

THE 29TH JULY 1848.

Appeal from a decision passed by Neelmunucc Mittre, Moonsiff of Kuddumgatchee, on the 19th June 1848.

Surroop Chunder Roy, (former Plaintiff,) Appellant,
versus

Hausa Sopbul Kaora, (former Defendant,) Respondent.

FOR rupees 14, lent on a bond, including interest.

The plaintiff alleged that he lent 13 rupees, on the 3d of Joistee 1253, to the defendant, on a tumsook, which, not being repaid, he prays the court to decree to him, with one rupee, 14 annas, 10 gundas of interest.

The defendant alleged that he never borrowed money from the plaintiff. He states that enmity exists on plaintiff's part towards him, because he has prevented a burkundaz of thannah Kuddum-

gatchee, by name Kalachand (who is an intimate friend of the plaintiff) from carrying on an intrigue with his (the defendant's) daughter.

The moonsiff dismissed the case, as he did not consider that the plaintiff could satisfactorily show how the stamped paper, on which the bond was written, and which was endorsed as sold to one Neelmunnee Ghose, had come into defendant's possession.

The plaintiff appeals and submits that his witnesses proved the justice of his claim: he urges that he has since the decision ascertained that Neelmunnee sold the paper to the defendant, and prays that that person's evidence may be taken on this point.

I see no objection to this. I therefore send the case back to the moonsiff to take steps for the evidence of Neelmunnee being taken; and then he will decide the case on a consideration of that and the previous testimony.

THE 29TH JULY 1848.

Appeal from a decision passed by Mr. Thompson, Moonsiff of Sulkeah, on the 23d May 1848.

Gooroopersaud Dey, (former Defendant,) Appellant,

versus

Govind Chunder Pal, (former Plaintiff,) and Bhoothnath Manjee, (former Defendant,) Respondents.

FOR rupees 52, 2 annas, 13 gundas, 1 kowree, due on a bond.

The plaintiff alleged that on the 3d of Kartick 1254, he lent 50 rupees to the defendants, who gave a tumsook. They have not paid the money, and he has to sue them for its recovery, including interest.

The defendant, Bhoothnath, admitted the claim. The defendant, Gooroopersaud denied that he borrowed any money from the plaintiff. He alleges that on the date of the bond he was at a considerable distance from the plaintiff's house, where the loan was said to have been made. He further states that the relation, Urjoon jemadar, of the plaintiff, has instigated that person to bring this action, because the defendant has a dispute with Urjoon regarding land.

The moonsiff heard the evidence of three witnesses on the plaintiff's part. Their names were Thakoordoss Bur, Jhurroo Bur, and Gorachand Santra, who proved the loan being made as stated by plaintiff. There were four witnesses examined on the part of Gooroopersaud Dey, to prove that he was at Singore, at a considerable distance from plaintiff's on the date of the bond. He failed, however, to file his promised documents in support of the state-

ment that Urjoon jemadar was the person who put the plaintiff up to sue him through enmity, and the moonsiff decreed the case.

The defendant, Goorooopersaud, in his petition of appeal, submits that absence from home prevented his making good his statements, and prays that he may now be permitted to do so. I observe, however, that on the 28th of April this case was deferred, in order to admit of the defendants' filing the requisite documents, until the 23d of May. If the defendant were really absent from home he ought, previous to his departure, to have appointed an agent to make his requisite documents over to the vakeel he employed : as he neglected to do so, and as the plaintiff's evidence has proved that the loan took place, I decline to admit this appeal.

THE 29TH JULY 1848.

Appeal from a decision passed by Baineenath Bose, Moonsiff of Manicktullah, on the 9th June 1848.

Joyenarain Hajra, (former Plaintiff,) Appellant,

versus

Sama Napectnee, (former Defendant,) Respondent.

FOR rupees 15, 9 annas, 5 gundas, due on a bond, including interest.

The plaintiff alleged that, on the 1st of Bhadoon 1250, the defendant borrowed from him rupees 14, of which she paid interest 5 rupees, and the sum above stated is still due.

The defendant denied the transaction, and says that the claim has only been preferred, because the defendant has a quarrel with the daughter of the concubine of the plaintiff.

The moonsiff discredited the evidence of the plaintiff. He adduced four witnesses in evidence ; but they gave contradictory testimony, and, in his opinion, the names of two were written at a different time from that of the others.

One of the witnesses only speaks of two rupees being paid instead of five, as stated by the plaintiff ; and I observe that two of the witnesses, Issur Chunder Sircar and Ramisser Singh, state that it was only on the date bond that they became acquainted with Jugomohun, another witness, whereas that person alleged that he knew the two former for eight years previous to that date. Besides, the manner in which the names of the witnesses are written on the bond has, in the opinion of several persons in court, a suspicious appearance ; and on consideration of this evidence, I see no reason to interfere with this decision of the moonsiff.

THE 29TH JULY 1848.

Appeal from a decision passed by Neelmunnee Mitter, Moonsiff of Kuddumgatchee, on the 12th July 1848.

Hadayut Usoobhan, (former Plaintiff,) Appellant,

versus

Chamoo Durjee, (former Defendant,) Respondent.

FOR 8 rupees, 2 annas, 8 gundas, 3 kowrees.

The plaintiff alleged that, on the 16th of Aughun 1251, he lent 6 rupees to the defendant without any document, and on a verbal agreement only, to repay it in Pose of that year. This has not been done, and he sues for the above sum, including interest.

The defendant admitted having borrowed 6 rupees from the plaintiff, and he repaid it according to the agreement made. Now the plaintiff repeats his false claim, because there is a quarrel between the parties, on account of a small sum defendant demands for work done for the plaintiff.

The moonsiff dismissed the claim, as he considered the payment proved by the defendant's witnesses, who also deposed to the existence of the quarrel between the parties, which the defendant mentions. He was further of opinion that, if the money were still really due, the defendant would not have put off so many years the institution of a suit for the money.

The plaintiff, in appeal, urges that the defendant's witnesses were unworthy of belief, and mentions one of them who has several times given evidence in the courts,—so often as to be of doubtful veracity. This man's name is Maher Sheik, but in addition to his there is the evidence of two other witnesses, by name Sakee Mundul and Sheik Amoo, who support the defendant's statements; and under these circumstances I see no reason to admit this appeal.

THE 29TH JULY 1848.

Appeal from a decision passed by Bainemadhub Soom, Moonsiff of Putterghuttah, on the 13th June 1848.

Prankisten Ghosaul, (former Plaintiff,) Appellant,

versus

Suttroghun Sirdar, (former Defendant,) Respondent.

FOR 15 rupees, 12 annas, advanced for straw.

The plaintiff filed a souda putter, dated the 20th of Bysak 1254, which, he says, the defendant gave him on account of an advance of 7 rupees, to provide straw for him in the month of Falgoon or Maug of the same year. That has not been done, and

now plaintiff sues to recover the price of the quantity of the straw, agreed to be provided (fourteen kahuns), at the time of plaint.

The defendant denied the transaction. He stated he had a quarrel with the plaintiff on account of refusing to give evidence in a case, and hence this unfounded claim. He states that he is a fisherman, and has nothing to say to the growing of straw.

The moonsiff dismissed the case, because one of the witnesses to the souda putter did not speak correctly as to the month in which the straw was to be provided, and there were only two witnesses of the souda putter examined. Besides, the evidence of the defendant made out that the alleged quarrel did exist between the parties.

The plaintiff appeals, stating that the discrepancy in the evidence was immaterial; but, on a consideration of this case, I see no reason to admit the appeal.

THE 29TH JULY 1848.

Appeal from a decision passed by Neelmunnee Mitter, Moonsiff of Kuddumgatchee, on the 15th June 1848.

Puttoo Goldar, (former Defendant,) Appellant,

versus

Hurry Fooolla Mundul, (former Plaintiff,) Respondent.

For rupees 32, price of paddy.

The plaintiff alleged in his plaint that, on the 5th of Srahun 1247, he lent 1 bees, 5 arrees, 2 kattees of paddy to the defendant, who agreed to repay in the months of Bhadoon and Pous of that year, the quantity of 1 bees, 17 arrees, 7 kattees to the plaintiff. Nine arrees, 7 kattees were paid only, the rest is due, and plaintiff accordingly sues for the price of 1 bees, 8 arrees still due, at the price thereof.

The defendant alleged that he repaid the whole of the paddy agreed for, and produced a receipt thereof: he did not obtain the return of the deed in which this agreement was included, because the making good a slight quantity of paddy was still matter of discussion on account of a difference of measure used by the parties.

The moonsiff heard the evidence of five witnesses on the plaintiff's part. Three of these, Modhye Mundul, Muheeroodeen Mundul, and Mutteoolah Mullik, deposed to the execution of the deed under which the paddy was lent; and two other witnesses deposed to the 9 arrees and 7 kattees being repaid to the plaintiff.

The moonsiff was of opinion that, if the two witnesses of the repayment by defendant spoke truth, the re-payments would have

been endorsed on the tumsook, or deed, given when the paddy was lent.

In appeal, the defendant repeats his former statements ; but, on a consideration of the papers in this case, I see no reason for admitting the defendant's appeal.

THE 31ST JULY 1848.

Appeal from a decision passed by Roy Hurro Chunder Ghose, Principal Sudder Ameen, on the 9th August 1847.

Sreemuttee Sumeeroonnissa Beebec, (former Defendant,)
Appellant,

•
• *versus*

Tarneepersaud Ghose, (former Plaintiff,) and Sreemuttee Tahiroonnissa Beebec, Abedoonnissa Beebec, for self and guardian of Khondkar Abdoorruheem, minor, Cazee Uheedooddeen Mahomed, Haneefa Beebec, Kuyasnath Dass, Kaleedass Mookhopadhya, and Moonshee Golam Eunoo, (former Defendants,) Respondents.

SUIT laid at rupees 743, 12 gundas, 2 kowrees, on account of possession of talook lands and jumma.

The plaint stated that this case was instituted for possession of the 2 annas, 13 gundas, 1 kowree, 1 krunt of the 8 annas share of mouzah Futtehpoor Panchkahoneea, pergunnah Ookara ; for the 5 annas, 6 gundas, 1 kowree, 1 krant of dheer Atsarra, which comprehends the mouzah Bareekparra, pergunnah Ookara ; also for a

* This means a share of the mouzah, bearing a jumma of the amount of rupees 204, 12 annas, 2 gundas, 2 cances.

a portion of the jumma*, amounting to 204 rupees, 12 annas, 2 gundas, 2 kowrees of the mouzah of Atsarra, in the same pergunnah. The plaintiff alleged that, on the 28th of Srabun 1255 B. S., these properties were sold to him by Tahiroonnissa Beebec, (wife of Moonshee Futteh Alli,) whose dower the property had been. A deed of sale of the above date was executed and made over to the plaintiff, which is registered, and which the plaintiff files. The price paid by plaintiff was 3400 rupees, of which 1600 rupees were paid on the 32d of Assar 1251 ; and an ekhar was given then that Tahiroonnissa would afterwards completely sell the estates to the plaintiff, it being then necessary for her to raise money to defray debts, especially money owed by her on account of a decree of court, passed in favor of Bhugwan Chunder Bose. The plaintiff got possession after his purchase, and, as the plaint states, paid the Government revenue, having endeavoured to realise rents from the ryots by enforcement of summary suits. However, the defendant, Golam Eunoo, alleged that he was farmer of a portion of the property, (that part comprised in Futtehpoor Panchkahoneea,) under Abedoonnissa Beebec, sister of Abdoorruheem, a minor, and son of Haneefa, the defendant,

who claimed to be purchasers from Tahiroonissa Beebee. This person, Eunos, opposed his enforcing summary awards against the ryots, thus ousting him from the property, and obtained an order from the collector for the plaintiff to sue in the civil court. Besides thus being ousted by the before named Eunos,—Kuylasnath Dass, the defendant, claimed the property comprised in Bareekparra and Atsarra, because he said he had a putnee tenure thereof, under the defendant, Sumecroonissa Beebee, who alleged that she had bought the said property from Tahiroonissa. The defendant, Kuylasnath, also virtually dispossessed the plaintiff by opposing the summary suits instituted by the plaintiff, and by having him referred to the civil court to establish his rights. The defendant, cazee Uheedooddeen, is made a defendant, the plaint states, because he instigated Sumecroonissa to oppose the plaintiff's exercising his proprietary rights in these two mouzals. The defendant, Kaleedass Mookhopadhya, is made a defendant, because he is nyeb of the before mentioned defendant, Kuylasnath. The plaintiff prays for possession and for mesne profits of the property.

Abedoonissa stated, in answer, that she holds a kubala, dated the 6th of Maugh 1249, for the property situated in Futchpoor Panchkahoneca; Tahiroonissa having sold that land to her and her minor brother, Abdoorruheem, on that date, for 1,000 rupees, in order to discharge the amount due by her, Tahiroonissa, to a person Bhugwan Chunder Bose, (the same person mentioned in the plaint,) who had obtained a decree against her. The defendant mentions that she paid cash 500 rupees and a Bank of Bengal note for 500 rupees, No. 460, which is particularised in the deed of sale filed by the defendant. This note was paid into the treasury of the civil court of Nuddea by the defendant cazee Uheedooddeen, father of Tahiroonissa. The defendant states that she did farm the property purchased by her to Golam Eunos. The defendant raised objections to the valuation of this suit.

The defendant, Sumecroonissa, alleges that she holds a deed of sale of the same date as is Abedoonissa's for the jumma in Atsarra and the land in Bareekparra. This she bought for 2,500 rupees, paying cash 500 rupees and three Bengal bank notes of, one for 500 rupees, No. 6902, one for 500 rupees, No. 6045, and the third for 1,000 rupees, No. 13,751. These sums were paid into the civil court under the same circumstances as were the 1,000 rupees realised by the sale to Abedoonissa. The defendant alleges that she had formerly occasion to borrow 500 rupees from one Bistennath Roy, on a deed of kut-kubala, and she redeemed this by pledging and conditionally selling the estate to Bam Chand Bose, on the 21st of Assar 1251. This kut-kubala was duly registered by the register of deeds. Subsequently she let the property in putnee to the defendant, Kuylasnath Dass, on the 26th of Bhadoon.

The defendants Golam Eunoss and Kuylassnath submitted answers stating in substance that the answers of Abedoonnissa and Sumeeroonnissa were true, and that the plaintiff had no just claim to the property.

The defendant, Tahiroonnissa, did not file any answer. She allowed the prescribed period to elapse without doing so; but she filed a petition, purporting that the plaintiff's claim was unfounded. This petition was given on the 15th of February 1847, or one year after the institution of the suit, and six months previous to its decision by the principal sudder ameen. The defendant, Tahiroonnissa, only filed the petition referred to in this decision.

The defendant, Uheedooddeen, did not answer, nor did Haneefa or Kaleedass Mookhopadhya.

The principal sudder ameen overruled the objections to the valuation of this suit. On a consideration of the evidence, oral and documentary, put in by the parties, he decreed the case, without, however, awarding mesne profits previous to the institution of the suit.

Sumeeroonnissa appeals from the decision passed, and submits that the evidence adduced by the plaintiff in the lower court did not support the award given. She further submits that Tarneepersaud Ghose, the plaintiff, was at the time of his alleged purchase a vakeel of the civil court of Nuddea; and that it was improbable that he, being actually the vakeel of Bhugwan Chuinder Bose, the decreeholder against Tahiroonnissa, would buy property liable to that person's claims, which were not satisfied by the sale. The ekrar referred to by the plaintiff was not, the appellant submits, proved in the lower court; and as regards the kubala filed by the plaintiff, she further urges that the estate claimed by the plaintiff (respondent) was under attachment until the 27th of Srabun 1251, and the deed of sale to the plaintiff (respondent) was not alleged to have been written out, or the purchase made, until the 28th of that month. The place where it was effected was Cazeeparra, fourteen coss from the station of Nuddea, and the appellant contends that the news of the release of the property from attachment could not have reached so far at the time when the purchase was said to have been made. The appellant moreover urges that previous to this kubala, filed by the plaintiff, the son of Sumeeroonnissa, the appellant, presented a petition to the Nuddea court, stating that his mother had bought the property now claimed by her. The appellant points out that the plaintiff could not show that he got possession after his purchase.

An answer to the petition of appeal is put in by Tarneepersaud Ghose, wherein he submits that his purchase was a valid and actual transaction; whereas the alleged purchase by this appellant and Abedoonnissa, cannot be upheld by the civil court, as at the very time the estates, they say they purchased, were under attachment,

and no one could dispose of them. The ekrar taken from the seller, Tahiroonnissa, when respondent advanced the 1,600 rupees referred to in his plaint, shows that this money was given; and the ekrar was taken purely in consequence of the seller's property being under attachment. As to the final deed of sale being written before the intelligence of the release from attachment reached the place where the deed was written and the money taken, the plaintiff says that the distance from Nudda is not so great as is mentioned; and that the news of the attachment having been taken off had reached the place when the sale took place. The opposition to plaintiff's (respondent's) getting possession is collusive. And the plaintiff refers to other matters in his answer, which I need not more particularly note.

Tahiroonnissa gives in an answer in support of the appellant's claim, as does cazee Uheedooddeen, who did not file any answer in the lower court, for which he accounts by saying that illness had prevented his doing so.

The plaintiff (respondent) brought this action to recover property, which he alleged was bought by him from Tahiroonnissa, a defendant, but which the defendants Sumeeroonnissa and Abedoonnissa, with others of the defendants, say those two defendants had purchased in two portions from that person. The plaintiff (respondent) filed an ekrar and a kubala in support of his statements. The defendants put in two kubalas for the respective portions they bought, along with other deeds corroborative of their titles to the disputed property. The ekrar filed by the plaintiff is supported by the evidence of Sheik Kathir and of Ram Nursing. It purports that rupees 1,600 were paid by the plaintiff to Tahiroonnissa, to enable her to defray the balance due on account of the decree passed in favor of Blugwan Chunder Bose, as well as to enable her to repay the sum deposited by her father, to meet the greater portion of that decreeholder's claim, and to discharge other debts she was liable for. The ekrar stipulates that, after the attachment was taken off, in consideration of this loan, or advance, being made, Tahiroonnissa would sell the property mentioned in the plaint. The attachment was effected previous to the sale of the property in satisfaction of Blugwan's decree. The witnesses describe Mjeehooddeen, the brother of Tahiroonnissa, (who was a witness to the kubala's registry by the register of deeds) to have been present at the time the 1,600 rupees was advanced, and to have been actively engaged in the transaction on the part of his sister. They say that the defendant Cazee Uheedooddeen was aware of the ekrar, though his name does not appear on the deed as a subscribing witness. Of the other witnesses to the deed one had died, one failed to attend though served with a subpoena, and a third had not been found. The final deed of sale to the plaintiff bears date the 28th of Srahan 1251. The date of the order to

release the property from the attachment under which it was held by order of the civil court, is the 27th of the same month ; and, however late in the day this order for release was passed, there was nothing impossible, in my opinion, in the intelligence of this release reaching a place fourteen or sixteen coss off early on the following day, supposing, as must have been the case in this instance, that due diligence was used to have the news conveyed. The kubala is supported by the evidence of Hurreedoss Dass, Neelmunnee Roy, and Praun Sheik, who were examined in the lower court, and, at the time of the registry of this deed of sale, by the register of deeds. Muejbooddeen, the brother of Tahiroonissa and Abdoolah, her brother. Muejbooddeen's brother-in-law, who are both attesting witnesses to it, proved its execution at the time of the final sale of the property to the plaintiff. The plaintiff (respondent,) in order further to support the allegations he has made regarding the ekrar, has filed a copy of a petition presented to the civil court by the father, Uheedooddeen, of Tahiroonissa, stating that he deposited the sum of rupees 2,599-4-3, on his daughter's behalf, in order to afford her the means of meeting Bhugwan Chunder the decree-holder's claim. This petition bears date the 9th of Mang 1249. In it the petitioner states that he will subsequently demand re-payment of this money from his daughter. The petition bears three days later date than the kubalas filed by Abedoonissa and Sumeeroonissa, and its presentation would show, that the alleged sales of the disputed property to them was unnecessary, because the money, which they assert was raised by the sale to them, had previously been paid into court by Tahiroonissa's father. The defendant, Sumeeroonissa, has filed a copy of a petition presented by Noor Allee, the son of Sumeeroonissa, the defendant, to the civil court of Nuddea, stating that his mother had bought (the date is not stated) the property she now claims from Tahiroonissa. Though this petition was not filed by plaintiff, I refer to it for the purpose of observing that in a copy of a counter petition from Tahiroonissa, dated the 1st of Assar 1251, it is denied that any such sale by her was made to Sumeeroonissa, and she therein states that her father had paid the greater portion of the money due to the decree-holder into court. When Noor Allee presented this petition, only the sum of rupees 138 was due to the decree-holder ; and Noor Allee sought in the petition to pay that sum into court, but on this plaintiff (respondent,) Tarneepersaud, objecting, at the time of the presentation of the petition, and stating that no sale to Sumeeroonissa had been effected, the principal sudder ameen, before whom the matter was pending, declined to receive it. From an extract from the register of monies paid into the Nuddea court (which has also been filed by Sumeeroonissa) it appears that Uheedooddeen did pay into court the money described in his petition.

The defendant Sumeeroonnissa, as well as the defendant Abedoonnissa, on her own account and on behalf of her minor brother, Abdoorruheem, have filed two kubalas, both dated the 6th of Maug 1249 B. S. There is also put in the lease granting the farm, referred to in the answers, to Golam Eunoo. This lease, or pottah, bears the same date as the two kubalas; and three witnesses, Bahiroollah, Duleelloollah, and Rujub Allee, were adduced to prove the transactions described in those documents, which transactions their evidence and the substance of the documents show occurred at the same time and place. The two first named witnesses gave evidence tallying with the defendant's statements; but it is not clear, in my opinion, from the evidence of the third, that he did witness the sale, or the actual execution of these deeds by the parties whose names appear therein. It appears that Golam Eunoo is the grandfather of Abedoonnissa, and all the Mahomedan defendants are relations of each other. The defendants had examined witnesses, Syed Munsoor Allee, Syed Sujaad Allee, and Sheik Mungloo, to prove that after the sales, to Sumeeroonnissa and Abedoonnissa, the former purchaser had pledged the portion of the property she bought to one Bistennath Roy, in consideration of a loan of rupees 500 being made to her in the month of Bysack 1251, and she files a kut-kubala showing that she had done so; and subsequently, to redeem this pledge, she borrowed rupees 1,000 from Ram Chand Bose, and pledged the same property on the 21st of Assar 1251. She also files a kut-kubala, indicative of this transaction on that date, given by her to the lender of the money. The last mentioned deed has been duly registered. With regard to the evidence of the three witnesses, who describe these transactions, I have to remark that the two first named are relations of the defendants; and the third witness's testimony shows that he is a person whose profession is to give evidence on every occasion he is required in our courts. These witnesses, besides deposing regarding the two last mentioned documents, also depose to the deeds which were drawn out when the alleged grant of the putnee tenure was made to Kuylasmath Dass, by Sumeeroonnissa. The defendant also has filed an extract (referred to by me in the part of this judgment wherein the plaintiff's evidence and proofs are considered) of the payments made into the civil court of Nuddea, wherein the numbers of the bank notes correspond with the numbers of the notes mentioned in the petition of Uheedooddeen, a copy of which the plaintiff (respondent) has filed, in order to show that the money obtained to enable Tahiroonnissa to discharge her debts was not raised from the defendants, but from Uheedooddeen. As regards the kut-kubalas which are put in, and the evidence regarding those deeds, which is insufficient, it would have been far more satisfactory had the lenders of the money themselves been brought forward in this case to prove that those were genuine documents. Nor can I see how the extract of the accounts of pay-

ments into the civil court of Nuddea can at all avail the defendants, when it is therein only mentioned that Uheedooddeen paid the money, and not Tahiroonnissa, or any of the defendants, into court. The petition of Uheedooddeen previously referred to shows that the money was paid by him and was his own. It is admitted by the defendants that their claim to the property is based on Tahiroonnissa's sale of it to them, when it was held under attachment by order of the court, which attachment was made previous to the sale of the property with a view to the realisation of money decreed to Bhugwan Chunder Ghose. I cannot admit that when property is thus attached, and is in *custodia legis*, it can be privately sold or alienated without the permission of the court, which, under some circumstances might be granted, for instance to enable the debtor to sell it to raise the money decreed. In the present case the attachment was not taken off until the 27th of Srabun 1251, and a sale on the 6th of Maug 1249, cannot be recognised by the court.

It is submitted by Abedoonnissa's vakeel that a decision of the Sudder Dewanny Adawlut (dated the 3d of September 1846,) passed in the case of Mahirchand Misser, will support the sales to the defendants. The decision is published in page 303 of the Bengalee Gazette for 1846. But it merely rules that a sale pending attachment cannot be summarily set aside. To the suit now under consideration this precedent cannot apply. Besides this, it appears to me that the case of Rajah Rajnarain Roy, decided in this court on the 8th of June 1846, shows that a sale when property is under attachment cannot take place. This decision was upheld by the Superior Court. I therein decided, in a miscellaneous case, that such a sale could not take place. Independent, therefore, of my being of opinion that the seller, Tahiroonnissa, could not legally sell to the defendants, who allege that they were the purchasers, I am of opinion that the evidence adduced by the plaintiff far preponderates over the testimony brought forward by the defendants, and that the sale, by the plaintiff, of the property he claims, has been proved. I therefore dismiss this appeal.

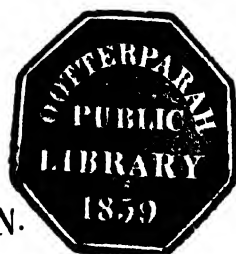
THE 31ST JULY 1848.

Appeal from a decision passed by Roy Hurro Chunder Ghose, Principal Sudder Ameen, on the 9th August 1847.

Abedoonnissa Beebee, for self and guardian of Khondkar Abdoorruheem, minor, (former Defendant,) Appellant,

versus

Tarneersaund Ghose, (former Plaintiff,) and Sreemuttee Tahiroonnissa Beebee, Sreemuttee Sumeeroonnissa Beebee, Cazeer Uheedooddeen, Mahomed, Haneefa Beebee, Kuylassnath Dass, Kaleedass Mookhopadhyay, and Moolasnee Golam Eunus, (former Defendants,) Respondents.



ZILLAH EAST BURDWAN.

PRESENT: W. LUKE, Esq., OFFICIATING JUDGE.

THE 2D MAY 1848.

No. 4.

Appeal from a decision of the Principal Sudder Ameen, Moulvee Fuzzul Rubbee, dated 19th February 1848.

Tarnee Choron Roy, (Plaintiff,) Appellant,

versus

Gooroo Dass Chuckurbuttee, (Defendant,) Respondent.

THE plaintiff sues to recover the value paid for a durputnee lease, viz. 2,200 rupees, in lot Sreekoondoo. He states that he paid all balances due to defendant on account of 1251 and 1253, B. S., and obtained receipts; that the defendant, the sudder putneedar, failing to make good his revenue, the said lot Sreekoondoo was sold on the 24th November 1846. The defendant urges, in the first place, that Raj Kishen Bose should have been included as the principal of Gooroo Dass, who is only a *benamee* putneedar; and secondly, that the plaintiff did not pay his rents on account of 1251 and 1253 B. S., in default of which the lot Sreekoondoo was sold on the 24th November 1846. The principal sudder ameen overrules the demurrer of defendant that Raj Kishen Bose should be a party to the suit, as he, defendant, admits that he is the benamee representative of Raj Kishen Bose, and that the putnee lease is in his name. He rejects the dakhilas and the evidence produced in support of them as unworthy of credit, and dismisses the case. The witness through whom, it is stated in the dakhila for 1251 B. S., the rent was paid, denies on oath having paid any money to Gooroo Dass or received a dakhila from him for rent for that year. The witnesses who depose to having paid the rent and received the dakhila dated 8th Aughun 1253 B. S., assert that they brought the money on the 7th or 8th of Aughun to Burdwan, and remained in the house of Pudoooloochun, and the following day paid it over to the defendant. As they left home on the 7th and were one day on the road, they could not have

reached Pudooloochun's house till the 8th and the money was paid the day following their arrival, viz. on the 9th, that is, one day subsequent to the date of the dakhila. Pudooloochun, witness, declares the money was brought to his house *on the 9th*, and taken away on the 10th Aughun; if the witnesses' statements are true the dakhilas must be false, and *vice versa*. From the conduct of the plaintiff it may be also inferred that the payment of rent was never made to defendant. On the day of sale, 24th November 1846, the plaintiff is proved to have been present at the collector's court and to have been the purchaser of the estate of Sreekoondoo. Had he, as a durputneedar, paid his rents, he would doubtlessly have offered objections to the sale and made known to the collector the fact of his having paid his rent to his principal, which he failed to do. Under the circumstances stated, I see no reason to disturb the decision of the lower court, which is hereby affirmed, and the appeal dismissed, without serving a notice on the respondent.

THE 4TH MAY 1848.

No. 5.

Appeal from a decision of the Principal Sudder Ameen, Moulvee Fuzzul Rubbee, dated 19th February 1848.

Tarnee Choroon Roy, (Defendant,) Appellant,

versus

Gooroo Dass Chuckurbuttee, (Plaintiff,) Respondent.

THE plaintiff sues to recover arrears of rent for 1251 and 1253 B. S., amounting, with interest, to Company's rupees 2,223-5-2.

The defendant denies the claim, admits his responsibility for rent, but in proof of liquidation files two receipts bearing the signature of defendant. The parties in this suit are the same as in case No. 4; the issue of both is dependant on the fact of whether defendant did or did not pay his rent for the years specified. The defendant, in support of his assertion, files two dakhilas, or receipts, and on the credibility to be attached to these documents the decision of the case must depend. In the dakhila for rent for the year 1251 B. S., the party specified by whom the money was paid to the plaintiff Gooroo Dass, distinctly denies, on oath, having received the dakhila or paid any rent to the plaintiff Gooroo Dass, with whose person he is unacquainted. With regard to the dakhila for rent for 1253 B. S., no credit can be attached to it for the reasons already assigned in case No. 4. I therefore see no reason to disturb the decision of the lower court, which is hereby affirmed, and the appeal dismissed, without serving a notice on the respondent.

THE 4TH MAY 1848.

No. 6.

Appeal from a decision of the Principal Sudder Ameen, Moulvee Fuzzul Rubbee, dated 22d February 1848.

Bhyrobnath Roy, (Plaintiff,) Appellant,

versus

Neel Kant Roy and others, (Defendants,) Respondents.

THE plaintiff sues to obtain his rights and interests in ancestral property, real and personal. It would appear that plaintiff's father previously filed a suit, No. 9782, to recover his rights, in which those now claimed by the plaintiff were included. After the decease of the former, plaintiff's two elder brothers withdrew the aforesaid plaint, and at their solicitation the case was struck off the file in 1239 B. S. The plaintiff files the present suit, urging that the acts of his brothers, during his (plaintiff's) minority, could in no way prejudice his rights, and that as they acted fraudulently and collusively, in withdrawing the suit, the law of limitation is not applicable. The defendants maintain that the said statute is applicable, and that the plaintiff was not a minor when the case No. 9782, was withdrawn.

From a deposition, on oath, made by the plaintiff on the 19th May 1842, in which Muharanee Bussunt Komaree, was plaintiff, case No. 10, it is clear that on that date he was thirty years of age; the suit No. 9782 was withdrawn in 1832, and plaintiff would accordingly be twenty years of age at that time.

Again, it is proved that the plaintiff was employed as a mohurir in the cutcherry of the muharaja some years prior to 1832, and if he was competent to perform the duties of that office he was capable of protecting his own interests and of taking measures to defeat the fraudulent attempts of his brothers to deprive him of his rights. I am of opinion that the plaintiff was not a minor when the suit was withdrawn, and that he has failed altogether to prove that the provisions of Regulation II. of 1805, are applicable to his case; and I am further of opinion that the lower court acted with sound discretion in dismissing the case on the ground of more than twelve years having elapsed between the time the cause of action arose and the date of filing this suit. Its decision is, therefore, affirmed, and the appeal dismissed, without serving a notice on respondents.

THE 9TH MAY 1848.

No. 73.

*Appeal from a decision of the Moonsiff of Samunttee, Sreekunt Sing,
dated 16th February 1848.*

Sumbhoo Nath Bose and others, (Defendants,) Appellants,

versus

Gunga Dhur Bose, (Plaintiff,) Respondent.

THE plaintiff sues to recovery arrears of rent for the year 1253, with interest, amounting to rupees 10, 12 annas, 16 gundahs, 3 cowrees.

The plaintiff states the defendants are liable for Sicca rupees 17-5 annually; the defendants admit their liability for rupees 17-8, and in evidence of payment produce sundry receipts.

The moonsiff rejects the receipts as unworthy of credit, and decrees for the plaintiff, assuming rupees 17-5 as the annual jumma for which the defendants are liable. It appears that the parties in the present case are at issue whether a certain tank is included or not in defendants' lease. The latter have been dispossessed and have instituted a suit against plaintiff No. 65, in the Samunttee moonsiff's court, which is now pending enquiry.

The moonsiff, in adjusting the arrears for which the defendants in this case are liable, refers to the accounts, filed in case 65, as authority for fixing the jumma at rupees 17-5 instead of rupees 17-8; these accounts show that a diminution of 3 annas in the jumma took place in 1244, on account of loss of tank, the possession of which is, as before stated, a disputed point. The moonsiff observes that the two cases are distinct and may be decided independently of each other. In defiance of this opinion, however, he (the moonsiff) disposes of this case upon accounts which are filed not in this, but in case 65, and by so doing virtually pronounces judgment in that case as to possession of the tank; if he declares the accounts in that case to be authentic and valid, he must exclude the rent of the tank, which defendants state forms part of their lease. On the result of the suit 65, must depend the issue of this case; and the moonsiff should therefore have disposed of it first. Ordered, therefore, that the appeal be decreed and the case remanded to the moonsiff, who will proceed to dispose of the two suits, 65 and 66, with reference to the remark aforesaid. The value of stamp used in preferring this appeal will be refunded in the usual manner.

THE 9TH MAY 1848.

No. 75.

Appeal from a decision of the Moonsiff of Kylee, Pearee Mohun Banerjee, dated 5th February 1848.

Soobudra Debea, (Plaintiff,) Appellant,

versus

Takoredass Dey, (Defendant,) Respondent.

THIS suit was brought to recover a bond debt for rupees 63, 4 annas, 17 gundahs, 3 cowrees, bond bearing date 22d Asin 1245 B. S.

The defendant denies having borrowed any money or executed a bond. The moonsiff observes that the testimony of the writer of the bond and of the attesting witnesses is conflicting, and altogether unworthy of credit, and dismisses the case. On a review of the proceedings, I concur with him as to the worthlessness of the evidence and in the conclusion he has come to. The appeal is dismissed without serving a notice on respondent, and the decision of the lower court affirmed.

THE 9TH MAY 1848.

No. 76.

Appeal from a decision of the Sudder Ameen Moonsiff, Mahomed Saim, dated 31st January 1848.

Bhugobuttee Debea, (Defendant,) Appellant,

versus

Issur Chunder Chatoorjee, (Plaintiff,) Respondent.

PLAINTIFF sues to recover arrears of rent, on account of the year 1253 B. S., amounting, with interest, to 9 annas, 19 gundahs, 2 cowrees.

The defendant replies that he holds his land at a fixed rate, in perpetuity, of 8 annas annually, and in proof of it files sundry dakhilas. The sudder ameen moonsiff rejects the dakhilas as unworthy of credit. The gomastah, whose signature is attached, denies having ever signed them, and their appearance being otherwise suspicious. Besides these documents, the defendant produces no proofs whatever in support of his statement. On the other hand the plaintiff files copies of village accounts for 1250 and 1251, two years prior to plaintiff's possession, produced in

evidence in a case in which the late proprietor of the estate was concerned, in which defendant's jumma is recorded at rupees 1-0-4-1, annually. The sudder ameen moonsiff, for these and other reasons, does not doubt the validity of plaintiff's claim, and decrees accordingly. On a review of the proceedings, I see no reason to differ with him. The appeal is therefore dismissed, and decision of the lower court affirmed, without serving a notice on respondent.

THE 11TH MAY 1848.

No. 4.

Appeal from a decision of the Moonsiff of Bhattoorea, Gopaul Chunder Ghose, dated 30th November 1848.

Ram Gopaul Chunder and others, (Defendants,) Appellants,

versus

Neel Konul Holdar and others, (Plaintiffs,) Respondents.

THIS suit was brought to set aside a sale made in satisfaction of decree, with a view to the property sold, being rendered liable for a decree held by plaintiffs.

The plaintiffs obtained a decree against one Sree Ram, for a bond debt. Whilst the suit was pending, the plaintiffs, having cause to believe the said Sree Ram, was about to make away with his property, moved the court to issue an attachment under Regulation II. of 1806, which was granted. The defendants, in the present case, then came forward and preferred claims to possession, as sale purchasers of the property, sold, as they represented, to satisfy a decree passed in favor of defendants against one Ramjye Ghose; and their claim was admitted, and the plaintiffs referred to a regular suit to prove that the property had been fraudulently, and with the collusion of Sree Ram, made away with. The defendants maintain that the property in dispute belonged, prior to their purchase of it, to Ramjye Ghose; and that when sold to defendants, in satisfaction of their decree against Ramjye, the latter was in possession. From inquiry on the spot, it would appear from the testimony of several witnesses that the property, when purchased by the defendants, was in possession of and belonged to Sree Ram. The defendants do not dispute the fact of Sree Ram's possession previous to that of Ramjye's; but they endeavour to assert that the latter acquired the property from the former by private transfer. The evidence, however, on this point is unsatisfactory and unworthy of belief. Three witnesses deposed to the transfer, but are not agreed as to its nature. One witness

declares, it was a conditional, and the others, that it was an unconditional sale; but when or how, there are no documents to show. The sale, by auction, of the property, was not effected by the defendants, till after the suit against Sree Ram had been instituted by the plaintiffs. I have no doubt, from the facts elicited in the present case, that the whole of the circumstances attending the sale of the property were fraudulent, and that the defendants, in connivance with Sree Ram, caused the property to be sold, and became themselves the purchasers, with a view to defeat the means plaintiffs had taken to recover from Sree Ram. On these grounds, I see no reason to disturb the decision of the lower court, which is hereby affirmed, and the appeal dismissed with costs.

THE 11TH MAY 1848.

No. 355.

Appeal from a decision of the Moonsiff of Bamunara, Moulvec Allee Hyder, dated 26th November 1847.

Sohucheree, (Defendant,) Appellant,

versus

Radagovind Brijbassee, (Plaintiff,) Respondent.

THE plaintiff sues to recover arrears of house rent, accruing from the year 1245 to 1252 B. S., amounting, with interest, to Company's rupees 19-3-2.

The plaintiff, with the exception of two witnesses, who depose to his having claimed on one occasion his rent from the defendant, produces no evidence in support of his demand.

The defendant asserts she has paid rent regularly, and holds the plaintiff's receipts in proof of it. The moonsiff rejects the dakhilas and the evidence in behalf of defendant as unworthy of credit, and decrees for plaintiff. The defendant's witnesses swear to the receipts being written and signed by the plaintiff; the signatures thereon correspond with that affixed to the back of the notice served upon plaintiff, in acknowledgment of his having seen it. I do not attach the same importance as the lower court to the fact of the signature the plaintiff wrote in the moonsiff's presence, not agreeing with those on the dakhilas, as on a comparison it does not tally with plaintiff's signature on his (plaintiff's) wakalutnama and other papers in the missil. The formation of the letters in the dakhilas certainly resemble those written in the moonsiff's presence; and on full consideration of all the circumstances I am led to place faith in the dakhilas and to deem them valid documents. The appeal is therefore decreed and the moonsiff's decision set aside.

THE 13TH MAY 1848.

No. 78.

Appeal from a decision of the Moonsiff of Madpore, Dubeeroodeen Mahomed, dated 15th February 1848.

Bungsee Dhur and others, (Defendants,) Appellants,

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versus

Moonshee Mahomed Mozuffer and others, (Plaintiff and Defendants,) Respondents.

THE plaintiff sues to recover arrears of rent for 1253 and part of 1254 B. S., amounting with interest to Company's rupees 36-5.

The plaintiff represents that the defendants are jointly liable for Company's rupees 100-13 annually, as cultivators of a certain portion of land recorded in the name of one "Doorga Choron." The defendants, Issur Mundul and Bukissur Mundul, admit their liability. The defendants, Bungsee and Nurhurree Mundul, likewise allow the aggregate amount of jumma to be correct, but maintain their right to pay their rent separately. The former urges that since the year 1224 B. S., he has paid his share of rent and obtained distinct receipts for the same to the close of 1252 B. S., and cannot be made jointly responsible with the defendants, Issur and Bukissur; that he paid his rent for 1253, but only obtained a receipt for a portion of it. Nurhurree likewise declares he has paid his share of the rent.

The point at issue in this case seems to be whether the defendants are jointly liable for plaintiff's claim. It is clear from the canoongoe's papers of 1229 B. S., the gomasta's evidence, given in behalf of the defendant, Bungsee, the zemindaree accounts, and finally the admission of the defendants themselves, that the lands, from which plaintiff now seeks to recover rent, were and are recorded in the talookdar's register in the name of Doorga Choron, the ancestor of defendants. There is no evidence to show that a transfer of names in the aforesaid register has ever taken place, or that the defendant Bungsee and his co-partners are each and separately liable for his share of the rent. On the contrary I am of opinion that the defendants, as cultivators of the land recorded in Doorga Choron's name, are jointly and collectively liable for the rents of it; and that the moonsiff exercised sound judgment in making them *all* responsible. His decision is therefore affirmed, and the appeal dismissed, without serving a notice on the respondents.

THE 15TH MAY 1848.

No. 79.

Appeal from a decision of the Moonsiff of Madpore, Dubeeroodeen Mahomed, dated 15th February 1848.

Bungsee Dhur and others, (Defendants,) Appellants,

versus

Moonshee Mahomed Mozuffer and others, (Plaintiff and Defendants,) Respondents.

THE plaintiff sues to recover arrears of rent amounting, with interest, to rupees 21-14. The particulars of this case are exactly similar to those already recorded in case No. 78, with this exception that the land from which rent is claimed is recorded in the name of one Ramkunt Mundul. There can be no question that the defendants are jointly and collectively responsible to the plaintiff for the rent sued for. The demurrers offered by the defendants, Bungsee and Nurhurree, are overruled for reasons already assigned in case No. 78. The decision of the lower court is hereby affirmed and the appeal dismissed without serving a notice on the respondents.

THE 16TH MAY 1848.

No. 69.

Appeal from a decision of the Moonsiff of Kytee, Pearee Mohun Banerjee, dated 5th February 1848.

Bishnath Kupooreea, (Defendant,) Appellant,

versus

Noyan Chunder Bhattacharj, (Plaintiff,) Respondent.

THIS suit was instituted to recover possession of a third share in a tank, with the mesne profits therefrom. The plaintiff states that the defendant granted to him and two others, defendants, Anund Pall and Sheik Arruff, a lease of the aforesaid tank in 1250 B. S., in *perpetuity*, at an annual rent of 4 rupees. The pottah was held by Anund Pall, who, in collusion with the appellant, dispossessed plaintiff in Kartick 1252 B. S. The defendant, appellant, admits having granted a lease as stated, but denies giving any pottah; the lease was an oral one for two years. The defendants, Anund Pall and Sheik Arruff, the co-partners of the plaintiff, assert their arrangement with the defendant, appellant, was an oral one.

The fact of the lease being granted and the rate of it are not disputed. The point for consideration is whether the lease was a written one in *perpetuity* or not? The defendant, appellant's statement that it was an oral agreement for two years is contra-

dicted by his *own* witnesses, who affirm that a *pottah* was granted. Defendant, appellant, (supposing his statement true,) by his own shewing departed from the terms of the lease by leasing the tank after the expiration of eighteen months, and before the close of the year 1252 B. S.; and the defendants, Anund Pall and Sheik Arruff, plaintiff's co-partners, by confirming defendant, appellant's statements, so opposed as they are to their interests, warrants the belief that they have acted in collusion with appellant, to deprive plaintiff of his rights. On a careful consideration of all the points elicited in the case, I am of opinion that a *mokurruree pottah* was granted to plaintiff and others, defendants, by the appellant, and that the decision of the lower court upholding plaintiff's possession is just and equitable; it is therefore affirmed and the appeal dismissed with costs.

THE 16TH MAY 1848.

No. 70.

Appeal from a decision of the Moonsiff of Kytee, Pearcee Mohun Banerjee, dated 5th February 1848.

Gopcenath Hajra and others, (Defendants,) Appellants,

versus

Noyan Chunder Bhuttacharj, (Plaintiff,) Respondent.

THE appellants are defendants in case No. 69, in which Bishnath Kupooreea, the talookdar, preferred an appeal. The circumstances which gave rise to the appeal having been detailed in No. 69, need not be here repeated. The appellants are the parties to whom the talookdar, Bishnath Kupooreea, granted a lease of the tank after dispossessing the plaintiff. The appellant's lease, for the reasons already assigned elsewhere, cannot of course hold good. The appeal is dismissed with costs and the decision of the lower court affirmed.

THE 16TH MAY 1848.

No. 85.

Appeal from a decision of the Moonsiff of Burdwan, Mr. J. S. Bell, dated 14th February 1848.

Hyatoonnissa Beebee, (Defendant,) Appellant,

versus

Ruhmutoonnissa Beebee, (Plaintiff,) Respondent.

THE plaintiff sues to recover a bond debt of rupees 17, 13 annas, 1 gundah, 2 cowrees, including interest—bond bearing date 22d Chyte 1248 B. S. The evidence of the witnesses attesting the

bond is by no means conclusive as to whether the money was actually paid to the defendant, and under all the circumstances it is doubtful whether the moonsiff was warranted in deciding as he has. The investigation is, however, incomplete; the moonsiff should have ascertained who wrote the bond, and taken his evidence, together with that of the woman servant, who is represented to have given the money to the defendant. The bond is attested by nine witnesses; four of whom affixed their signatures, the others having made a mark only. The moonsiff, however, assigns no reason for not taking the evidence of three out of the four that could write. The appeal is therefore decreed, and the case remanded for further inquiry, with reference to the foregoing remarks. The value of stamp used in preferring this appeal, to be refunded in the usual manner.

THE 19TH MAY 1848.

No. 64.

Appeal from a decision of the Moonsiff of Burdwan, Mr. J. S. Bell, dated 27th January 1848.

Puran Chunder Tah, (Defendant,) Appellant.

versus

Gour Mohun Chunder, (Plaintiff,) Respondent.

THE plaintiff sues to establish a right of way closed by the defendant, in Bysack 1253. An ameen was deputed to the spot to inquire into the merits of the case; and he represents that the road in dispute has been in existence from time immemorial; and this is confirmed by the testimony of the plaintiff's witnesses, as also by that of one of the witnesses of the defendant. The defendant denies that there is or ever has been a road, as stated by plaintiff; but this statement is unsupported by any proof. I therefore see no reason to differ with the moonsiff: his decision is accordingly affirmed and the appeal dismissed with costs.

THE 22D MAY 1848.

No. 7.

Appeal from a decision of the Moonsiff of Burdwan, Mr. J. S. Bell, dated 29th November 1847.

Sheik Husnoo and others, (Defendants,) Appellants,

versus

Sheik Jumeet, (Plaintiff,) Respondent.

THIS suit was instituted to recover possession of a dwelling house, site of the same, trees, &c., with mesne profits. Suit laid at rupees 31-6-10.

The defendant, Jugroo, sold the plaintiff his rights and interests in 8 cottahs of lakhiraj land, and of a house and trees, &c., situated

upon the said land ; and executed a deed of transfer of the same, bearing date the 6th Falgoon 1251 B. S.

The defendant, Jugroo, however, failed to have the deed registered or to relinquish possession.

The defendant, Jugroo, denies having sold the aforesaid property, and says he merely pledged it to plaintiff for a loan of 8 rupees. The defendants, appellants, Hingun, Husnōo, and Mehboob, state that they rented certain trees from the defendant Jugroo, to whom they paid their rent as the proprietor in possession. This case was sent back for re-trial by the principal sudder ameen to ascertain who was in possession and from what date.

The moonsiff, after completing this enquiry, modified his first decision, by rendering the defendants, Husnōo, Hingun, and Mehboob, whom he had, in the first instance, exempted, liable, with Jugroo, for wasilat ; and from this award the three parties first mentioned have appealed.

From the tenor of the plaint it is evident that plaintiff never obtained possession of his purchase. There can be no question, I think, that the defendant, Jugroo, sold the property, and that the deed of sale is a true and valid document.

Plaintiff's failing to get possession was the act of Jugroo ; an act for which he is solely responsible.

The appellants held leases from Jugroo, of certain trees on the disputed property, and as long as the latter retained possession the former were justified in paying their rents to him ; as they could not be supposed to be privy to the transactions that had occurred between the plaintiff and Jugroo.

The moonsiff's decision, in the first instance, was, in my opinion, just and equitable. The defendant, Jugroo, is solely responsible for the losses that have ensued to plaintiff by his retaining forcible possession. I therefore affirm the decision of 19th December 1846, making Jugroo liable *exclusively* ; but decree the appeal, and in modification of the moonsiff's second decision of the 29th November 1847, exempt the appellants from all liability.

THE 22D MAY 1848.

No. 9.

Appeal from a decision of the Moonsiff of Burdwan, Mr. J. S. Bell, dated 29th November 1847.

Sheikh Jumeut, (Plaintiff,) Appellant,

versus

Sheikh Husnōo and others, (Defendants,) Respondents.

THE particulars of this case are identical with those detailed in case No. 7, and need not be here repeated. The appellant demurs

to two points in the decision of the lower court, first, that the value of produce of certain trees has been estimated at too low a rate; and secondly, that wasilat from the date of institution of the suit to that of its disposal has not been allowed. The demurrer on the first point is overruled, as the produce was estimated on data gathered on the spot. The plea as regards the second point is good: the appellant is clearly entitled to wasilat until he obtains possession. The moonsiff, however, has awarded no wasilat (which he should have) for the period the suit was pending in his court. The appeal is therefore decreed, and the decision of the lower court modified accordingly.

THE 23D MAY 1848.

No. 88.

*Appeal from a decision of the Moonsiff of Cutwa, Ilahee Buksh,
dated 22d February 1848.*

Gopaul Chunder Ghosaul, (Defendant,) Appellant,
versus

Sona Monee Dibe, mother of Chunder Mohun Chowdry and
others, (Plaintiffs,) Respondents.

THE plaintiffs sue to recover the value of certain crops illegally distrained under Regulation V. of 1812, together with damages. Suit laid at 31 rupees.

This suit has been decided *ex parte* by the lower court in favor of plaintiff, the defendants failing to appear. The latter have preferred an appeal, and ground the right to make it, first, on the fact that the suit is not cognizable, more than one year having elapsed since the cause of action arose; secondly, that a suit involving rights and interests in the land for which plaintiff now seeks to recover, is now pending in the sudder ameen's court. The provisions of Regulation VIII. of 1831 are inapplicable in this case; the distraint of plaintiff's crops was illegal, and moreover the law above quoted seems to refer to summary awards of revenue authorities, and not to an attachment made by a zemindar under Regulation V. of 1812. A suit for the right of possession of the land aforesaid, even if pending, can in no way affect plaintiff's right to sue for losses arising thereon from acts of the defendant.

The appellant's objections are accordingly overruled; and as the case appears to have been legally disposed of, the moonsiff's decision is affirmed, and the appeal dismissed, without serving a notice on respondent.

THE 23D MAY 1848.

No. 90.

Appeal from a decision of the Moonsiff of Suleemabad, Gunga Churn Shome, dated 28th February 1848.

Ram Nurain Ghose, (Plaintiff,) Appellant,

versus

Pran Chung, (Defendant,) Respondent.

THE plaintiff sues to recover a bond debt, principal and interest, rupees 15-8-3, the bond bearing date 29th Sawun 1252.

The defendant denies having executed any bond, or being indebted to plaintiff.

The moonsiff dismisses the case. He observes that the evidence of the attesting witnesses is contradictory and unworthy of credit; that the testimony of the writer of the bond is totally at variance with that of the attesting witnesses as to the place in which the bond was drafted and the parties present at the time. On a review of the proceedings I see no reason to differ in opinion with the lower court. The appeal is dismissed without serving a notice on the respondent, and the moonsiff's decision affirmed.

THE 23D MAY 1848.

No. 350.

Appeal from a decision of the Moonsiff of Cutwa, Ilahee Buksh, dated 29th November 1847.

Muddun Mohun Ghose and others, (Defendants,) Appellants,

versus

Rufeena Beebee, (Plaintiff,) Respondent.

THE plaintiff seeks to recover damages to the extent of 59 rupees for crops destroyed by the trespass of defendants' cattle. The defendants deny the trespass, and state that the plaintiff reaped a portion of his crop, and that the remainder was swept away by an inundation of the river. The moonsiff decrees for the plaintiff. The evidence in behalf of the plaintiff is consistent and clear as to the trespass of the defendants, which is in no way invalidated by the testimony of the witnesses of the latter; their story is contradictory and unworthy of credit; and they moreover declare positively that a portion of the plaintiff's land was fallow in 1252 B. S., though they are unable to define its position or describe its boundaries. I therefore affirm the moonsiff's decision, and dismiss the appeal with costs.

THE 25TH MAY 1848.

• No. 91.

Appeal from a decision of the Moonsiff of Khundghose, Mun Mohun Baboo, dated 28th February 1848.

Cazee Mahomed Mohsain, (Plaintiff,) Appellant,

versus

Kamoo Mullick and others, heirs of Torab Mullick, deceased,
(Defendants,) Respondents.

THE plaintiff sues to recover one rupee four annas on account of marriage fees. He states that in virtue of his office as cazee of the pergunnah he is entitled to fees on the occasion of a marriage; but that the defendant, Torab Mullick, deceased, married his daughter in the month of Falgoon 1253 B. S., and employed one Keefaiutoollah to perform the ceremony, and refused to pay plaintiff the fees; for the recovery of which he now sues. The defendants deny plaintiff's right to fees, and plead their right to employ any person they please to perform the marriage ceremony. Under the provisions of Section 8, Regulation XXXIX. of 1793, a cazee can exact no fee for duties and ceremonies unless the parties concerned have agreed to pay him. In the present instance the cazee's services were not employed, and he could therefore *legally* have no claim on the defendants. In support of this view the case quoted, in vol. VI. 31, forms a precedent; wherein the Sudder Court ruled that the claim could not be maintained. The moonsiff was correct, I think, in passing judgment in favor of defendants: his decision is accordingly affirmed, and the appeal dismissed, without serving a notice on the respondents.

THE 29TH MAY 1848.

No. 95.

Appeal from a decision of the Moonsiff of Suleemabad, Gunga Churn Shome, dated 25th February 1848.

Sheik Kureem Bux and others, (Defendants,) Appellants,

versus

Malahinissa Beebee, (Plaintiff,) Respondent.

THE plaintiff sues to recover an arrear of rent for the month of Assar 1254 B. S. The plaintiff states defendants took a lease of beegahs 4-1-15½, at an annual jumma of rupees 9-1, and gave a kubooleut for the same, bearing date 16th Chyte 1253 B. S., but refuse to pay rent. The defendant, Kureem Bux, denies having taken any lease from plaintiff, or given a kubooleut, as represented. He adds his name is *Kurrum* Bux and not Kureem Bux. The moonsiff overrules the defendant's demurrers as to jurisdic-

tion and name, and decrees for plaintiff. In regard to the difference in name he observes that the decree passed in his court, case 290, removes any doubt as to the name of the defendant, which is *Kureem* and not *Kurrum* bux; but it would appear from a reference to the said decree that the suit was against *Kurrum* Bux and not *Kureem*, and that the award was against the former.

The moonsiff has taken no steps to establish the identity of *Kurrum* Bux and *Kureem* Bux by an inquiry on the spot; and his proceedings are so far incomplete. The appeal is therefore decreed, and the case remanded for further inquiry as to the point urged by appellant, that he is *Kurrum* and not *Kureem* Bux. The cost of stamp incurred in preferring this appeal to be refunded in the usual manner.

ZILLAH CHITTAGONG.

PRESENT: F. SKIPWITH, Esq., OFFICIATING JUDGE.

THE 2D MAY 1848.

No. 264.

*Appeal from the decision of Moulvee Guda Hossein, First Division
Town Moonsiff, dated the 29th April 1847.*

Sagur Mahomed, (Plaintiff,) Appellant,

versus

Musst. Kooseah Beebee and others, Respondents.

THE appellant states that, agreeably to a pottah of Noor Mahomed, dated 22d Jeit 1188, he cultivates 1 k. 7 g. 2 c. upon an annual rent of 2 rupees, 12 annas, and that, since the death of Noor Mahomed, he has paid part of his rents to Ayeshah Beebee, part to Mahomed Nukhee, and part to Kooseah Beebee, and has their receipts, but that notwithstanding this Kooseah Beebee had obtained rent from him for the year 1207 by a summary suit.

Kooseah Beebee says, she is the heir of Noor Mahomed, and admits that she had taken the rents, and pleads that appellant had no right to pay to the other parties named.

As the appellant did not produce any dakhilahs, or receipts, or other proof in support of his assertion, the moonsiff, disregarding the admission of Ayeshah Beebee and Mahomed Nukhee that they had taken rent, dismissed the suit, and I see no reason to interfere. If the appellant had really paid the rents he says he has, he would have adduced proof; but as he has not done this, I concur in the moonsiff's opinion that he has brought this action in collusion with Ayeshah Beebee and Mahomed Nukhee, who appear to be claimants to the land, to prove that they are in possession, whereas such is not proved to be the case. I therefore confirm the decision, and dismiss the appeal.

THE 2D MAY 1848.

No. 265.

Appeal from the decision of Kheiroollah Shah Budukshanee, Moon-siff of Zorawargunge, dated 30th April 1847.

Mahomed Yasseen *alias* Choonee Meeah, (Plaintiff,) Appellant,
versus

Budeeroodeen, Musst. Aeenah Beebee, and others, (Defendants,) Respondents.

THE appellant says that Aeenah Beebee gave an *ijarah* of 12 gundahs 2 cowrees of land to Budeeroodeen; and that he gave Budeeroodeen a *kuboolent* for the land in question for a period of five years, at the rate of 5 rupees 3 annas per annum; but that he has never cultivated it, and yet Budeeroodeen attached and sold his property for arrears of rent, alleged to be due for 1206 and 1207. He therefore brought this action to set aside the *kuboolent*.

As the *kuboolent* was voluntarily executed, the moonsiff dismissed the suit, and in this decision I concur, especially as no one opposed the appellant, who might have cultivated the land had he chosen, and his omission to do so cannot bar the respondents' right to rent. I therefore confirm the decision, and dismiss the appeal.

THE 2D MAY 1848.

No. 268.

Appeal from the decision of Moulvee Guda Hussein, Town Moonsiff, dated 19th April 1847.

Munnoo, Appellant,

versus

Korbance, Oomerally, and Kumlah Bebee, relict of Itibaree, Respondents.

THE respondents brought this action for the purpose of having their names entered in the deputy collector's measurement papers, dated 4th Cheit. 1245, as joint proprietors with Munnoo, of rupees 1 5-2, rent-free land recorded in dags 1910 and 1911.

The appellant denied that the respondents have any interest in the land, and asserted that the land was purchased by his father Tunoo, in the year 1148.

As the evidence taken before the moonsiff proves the joint possession of both parties, and the appellant was unable to prove the deed of sale filed by him, the moonsiff passed a decree in favor of the respondents.

The appellant now urges, first, that the respondents have understated the value of the land in their plaint; and second, that the witnesses produced by the respondents are their relatives. The first plea cannot be entertained in appeal as it was not urged in the moonsiff's court, and the second is unsupported by any evidence, and the witnesses themselves have deposed on oath that they are in no way connected with the respondents. I therefore confirm the decision, and dismiss the appeal.

THE 2D MAY 1848.

No. 271.

Appeal from the decision of Moulvee Guda Hussein, Town Moonsiff, dated 28th April 1847.

Golam Ally, (Defendant,) Appellant,

versus

Bahadoor Ally Khan, (Plaintiff,) Respondent.

THIS was a suit to try whether a sale of 15 gundahs of rent-free land was a *bona-fide* or conditional one. The moonsiff considered from the evidence adduced by the respondent that it was a conditional one, but the appellant urges that he was never called upon to file his proofs, and that if he had done so the moonsiff would at once have discovered a marked discrepancy between the deed of sale in his possession and the ikrar filed by the respondent, from whom moreover he holds a kubooleut stating that the land was sold and not mortgaged to him.

On examining the papers I find that the appellant had filed a copy of a measurement paper to shew his possession, and also a copy of a decree; but he has never been called upon to file any proofs whatever. It is necessary that the deed of sale and ikrar should be compared, and I therefore return the case to the moonsiff for re-investigation. The appellant is entitled to receive back the value of his appeal stamp.

THE 4TH MAY 1848.

No. 277.

Appeal from the decision of Kheiroollah Shah, Moonsiff of Zorawar-gunge, dated the 26th April 1847.

Ram Manick Shore and Ram Kishen, (Defendants,) Appellants,

versus

Shamut Ally, (Plaintiff,) Respondent.

THE respondent brought an action to recover the value of 2 cowrees illegally attached and sold by the appellant for arrears of rent, although he (the respondent) did not cultivate his land.

The appellant admits the attachment and sale, but says the respondent cultivates 2 gundahs 3 cowrees of land in a talook purchased by him, called Jeigunga; and that he had served the respondent with due notice to make a settlement.

The moonsiff, asserting that the attachment was illegal, because the appellant had no kubooleut, decreed the amount.

The appellant, in his appeal, asserts that the moonsiff's reasons for deciding the case against him are bad; and that he has himself brought an action against the appellant in the moonsiff's court to establish his right, which suit ought to have been decided first.

I am quite ready to allow that the moonsiff's reasons are bad, but the appellant ought to have brought forward proof that the respondent cultivated part of this land. This he omitted to do, and has stated no reason for the omission in the appeal. The objection urged that the moonsiff ought to have decided his suit first, is irrelevant, as the establishing his proprietary right to the land would not prove that the respondent had cultivated it. I therefore confirm the decision, and dismiss the appeal.

THE 4TH MAY 1848.

No. 279 of 1847.

*Appeal from the decision of Poornochunder, Moonsiff of Howlah,
dated 29th April 1847.*

Huradhur, (Plaintiff,) Appellant,

versus

Ramshurun, (Defendant,) Respondent.

THE appellant asserted that he had, on the 13th Bysack 1208, mortgaged a bracelet to the respondent in the presence of witnesses, with an understanding that it was redeemable at the end of six months on payment of the principal sum lent (which was 4 rupees) with legal interest, but that the respondent demanded the usual rate of interest of 1 anna a month, and would not give back the ornament.

The respondent denies all knowledge of the transaction, and remarks that the appellant is not a child that he should have left the bracelet with him, without an acknowledgment, and he further adds that he was on the day the occurrence was said to have taken place, in Chuckleh Rowzan.

As the *alibi* was proved, and several discrepancies are apparent in the depositions of the appellant's witnesses, the moonsiff dismissed the case; and after going through the evidence I consider the decision proper, and accordingly confirm it, and dismiss the appeal.

THE 4TH MAY 1848.

No. 280.

Appeal from the decision of Kheiroollah Shah, Moonsiff of Zorawar-gunge, dated 26th April 1847.

Rammanick Shoo, Appellant,

versus

Oomer Ally Sooree and others, Respondents.

THIS was an action to recover rent for certain land cultivated by the respondents in the year 1207, in the talook Jeigunga, the property of appellant.

The respondents did not defend the suit. The moonsiff, instead, of taking evidence as to the cultivation of the lands by the respondents, dismissed the suit, as the appellant admitted that he had made no settlement for the lands with the respondents.

As the appellant had filed some chittahs and a list of witnesses, to prove the cultivation of the lands for which rent was claimed by the respondents, the case is remanded to the moonsiff for investigation. The appellant is entitled to receive back the value of his stamp.

THE 4TH MAY 1848.

No. 283.

Appeal from the decision of Kheiroollah Shah, Moonsiff of Zorawar-gunge, dated 26th April 1848.

Rammanick Shoo, (Defendant,) Appellant,

versus

Soric, (Plaintiff,) Respondent.

THIS suit is connected with case No. 280, being brought to recover back same property sold for arrears of rent due from the respondent for the very same land, and for the same year as in No. 280.

The moonsiff stated that, as the appellant had no kubooleut for the land, he could not legally attach and sell the respondent's property for arrears of rent, and therefore passed a decree in favor of the respondents.

The question to be decided is, did the respondent cultivate the land for which the appellant claimed rent or not? The appellant filed a list of witnesses to prove that he did, but the moonsiff did not take their evidence. I therefore return the case for re-investigation. The appellant is entitled to receive back the value of his stamp.

THE 4TH MAY 1848.

No. 282.

*Appeal from the decision of Moulvee Guda Hussein, Town Moonsiff,
dated the 27th April 1847.*

Musst. Khodojah Beebee, (Defendant,) Appellant,

versus

Fukeer Mahomed, (Appellant,) Respondent.

THE respondent stated that he is the proprietor of 10 gundahs of rent-free land, which has descended to him from his ancestors ; and that in the present measurement 6 g. 1 c. of the land has been erroneously entered in the appellant's name in dag No. 164 of the chittah papers, dated the 26th Poose 1200 ; and he therefore brought this action for their correction.

The appellant declared that she acquired the land from her husband, Ameenoodeen *alias* Einoodeen, and that it had been confirmed as her property by a decree of court. The moonsiff decided that the land belonged to the respondent, and accordingly passed a decree in his favor.

In the decree, dated 22d August 1844, affirmed in appeal, it is distinctly stated that the respondent is entitled to and in possession of 10 gundahs of land ; and again, in the execution of a decree, in which Kishendas was decree holder and Ameenoodeen *alias* Einoodeen, the husband of appellant, was defendant, these identical 10 gundahs were attached, and released as being in the possession of the respondent. It is proved moreover by witnesses that this land is up to the present time in his possession, 3 g. 3 c. of which is entered in dag 165 as his property, the other in dag No. 164 as appellant's. The order therefore of the moonsiff directing the correction of the name in dag 165 is proper, and I confirm the decision, and dismiss the appeal.

THE 8TH MAY 1848.

No. 4.

Appeal from the decision of Baboo Opendar Chunder Neyaruttun Pundit, Second Principal Sudder Ameen, dated 24th August 1847.

Bocha Ghazee, Appellant,

versus

Allae Bux, Respondent.

THE appellant brought an action for the value of a bond, dated the 4th Magh 1199, Mughee, in which 350 rupees were declared to be of the Sicca currency, and 100 of the Company's.

The principal sudder ameen gave a decree for the whole of the claim, but considering the introduction of Sicca rupees into the bonds subsequent to the passing of Act XIII of 1836, which declares a Sicca rupee to be an illegal tender, as improper, fined the appellant four annas for each Sicca rupee so entered, under the provisions of Section 7, Regulation XIII. of 1807.

The appeal, therefore, is brought to amend the decree in so far as regards the imposition of the fine.

Allace Bux, the respondent, is not present, but as he can be in no way affected by any order passed, the summoning him is unnecessary.

Act XIII of 1836 merely declares that the Calcutta Sicca rupees shall cease to be a legal tender on the 1st January 1838, but does not forbid its introduction into a bond; and the Court of Sudder Dewanny Adawlut have already ruled in their Construction of the Act, No. 1151, dated the 27th April 1838, that it is not only unnecessary that bonds should be drawn out in Company's rupees, but on the contrary that they may be drawn in Sicca rupees, at the option of the party. Regulation XIII. of 1807, which was passed to declare bonds drawn out in Sicca rupees, as alone legal after the promulgation of such Regulation, is not even referred to in Act XIII of 1836, and is clearly inapplicable to the present case, for the appellant is fined under its provisions for entering the word Sicca instead of Company's in his bond. I therefore amend the principal sudder ameen's decree, and remit the fine imposed on the appellant.

The appellant to pay his own costs.

THE 9TH MAY 1848.

No. 1 of 1848.

Appeal from the decision of Baboo Opendar Chunder Nayaruttun, Second Principal Sudder Ameen, dated the 29th December 1847.

Nizamut Ally, Appellant,

versus

Magun Beebee, Respondent. •

THIS is an action to set aside four leases of land, alleged to have been fraudulently recorded in the collectorate of Chittagong, in the names of Abdool Sumud and Huremonoo, instead of in that of the respondent, under the following circumstances.

The respondent says that, on the 6th Bysak 1186, her father, Budeeat Jumah, conveyed a rent-free tenure, consisting of 5 d., 6 k., 6 g., 2 c. of land, situated in various mouzahs, jointly to her and her grandmother, Zoolikhah Beebee, and put them in posses-

sion, and that afterwards Zoolikhah Beebee transferred to her all her rights and interests in the estate; that in consequence of her sex and minority, she was obliged to manage the estate by agents, which she did, first, by Huremonoo, second, by Abdool Kureem, and third, by Abdool Sumud; that the last named, on the resumption of her lands by the collector, fraudulently recorded them as belonging to him, and took leases for them from the collector, although she had deputed him as her agent to settle for them on her behalf; that on his death, in 1200, his brother Huremonoo, forcibly took possession of the estates, from which he has annually collected 132 rupees; that he died, leaving Nizamut Ally his heir, who has possession of the estate; and that she therefore brings this action to recover possession of 4 d., 11 k., 18 g., 2 c., (the balance of the estate being in her possession,) with mesne profits, from the year 1201 to 1205, and also to reverse the four leases recorded in the collectorate in the names of Abdool Sumud and Huremonoo. The dates and particulars of the leases, however, are not mentioned in the plaint.

The appellant, among other pleas, urges, as he did in the court of the principal sudder ameen, that the suit is not cognizable, inasmuch as it is brought to reverse four leases, all of which were given on separate dates and for different mehals; and that as his leases are for 7 d., 1 k., 12 g., the respondent ought to have distinctly pointed out where the land is situated for which the action is brought.

The principal sudder ameen, considering the respondent's claims established, gave a decree in her favor, deciding that the four leases, recorded in the name of Abdool Sumud and Huremonoo, should be reversed. He omitted, however, to specify the dates of the leases and the quantity of the land in each; and the appeal therefore was admitted on the 3d April, to rectify this omission, as well as to consider the plea adduced by the appellant, which it is unnecessary to mention here, as, for the hereafter mentioned reasons, I consider the suit not cognizable.

The first point to be decided then is, can the action be entertained to reverse four leases of land obtained at different dates, and for different mehals, the quantity of land claimed being less than the amount declared in the lease, and yet no specification of the lands claimed being made in the plaint? I am clearly of opinion that the suit cannot be entertained, and that the respondent is liable to nonsuit.

The respondent contends that her action is based upon the deed of sale, and that therefore her suit is cognizable, and she quotes in support of her plea the Court's Constructions, Nos. 481 and 577, and two decisions of the Sudder Court, one dated the 2d August, and reported in the Government Gazette, dated the 9th November 1847, the other dated the 4th September, and reported

in the Gazette of the 14th December 1847. Had her claim been a claim of inheritance, or had the lands sued for formed one mehal, the precedents referred to in Construction No. 577, and the decision of the Sudder Court, dated August 2d, would have applied; but as each mehal is separately assessed and for different descriptions of lands and the leases given at a different date, each lease must be considered to be a distinct cause of action. One lease is for talook Abdool Sumud, lakhiraj, consisting of 3 doons, 2 kanecs, 15 gundahs, 2 cowrees, at an annual jumma of rupees 33-5-5, and dated the 26th January 1838. The second is for talook Huremonoo, in mouzah Barchara, consisting of 3 kanecs, at a jumma of 8 annas 10 pie, and is dated 11th May 1840. The third is for 50 doons, 13 kanecs, 16 gundahs, 2 cowrees, in a noabad talook, named Abdool Sumud, upon a jumma of rupees 59, annas 3, pie 3, and is dated the 26th January 1838.

The fourth lease is not filed at all.

The three leases filed are for 54-3-10-3-1 of lands, and the respondent has not stated how much, out of each lease, belongs to her, though she only claims 4 doons, 11 kanecs, 18 gundahs, 2 cowrees. I therefore reverse the principal sudder ameen's decision, and nonsuit the case.

The costs of both courts to be defrayed by the respondent.

THE 9TH MAY 1848.

No. 7 of 1848.

Appeal from the decision of Bahoo Opendar Chunder Neyaruttun Pundit, Second Principal Sudder Ameen, dated 29th February 1848.

Musst. Kishoree, relict of Gokulchunder Chowdree, Appellant,

versus

Tercioram Dutt, Respondent.

THE respondent states that two brothers, Gokulchunder and Kishenchunder, lived together in the same house, and that, on the 8th Sawun 1197, he lent Gokulchunder 500 rupees, taking his bond from him for the amount; that he died before it was liquidated, leaving an infant daughter and his widow, Musst. Kishoree, under the care of his brother, Kishenchunder, who paid him on demand some interest upon the bond executed by Gokulchunder, and also executed to him an ikrar, or agreement, to pay the balance of the bond within three months. Before the bond was

liquidated, however, he died, leaving a son, a minor, and Musst. Anundmei, a widow; and he therefore brings this action against the two widows, Musstn. Kishoree and Anundmei, they being in possession of the property of their respective husbands.

Musst. Kishoree admits the execution of the bond by her husband Gokulchunder, but says the money was borrowed to save an estate of his brother Kishenchunder from a sale for arrears of revenue, and that it was so applied; that Kishenchunder paid part of the money due, and upon the death of her husband, Gokulchunder, took the responsibility of the bond upon himself, and that she is not therefore answerable for the amount.

Musst. Anundmei pleads that her husband Kishenchunder had for some time separated from his brother, Gokulchunder, and that if Gokulchunder executed the bond, his widow is responsible, and not she; and she further denies that her husband accepted the bond.

As the execution of the bond and receipt of the money by Gokulchunder were fully proved, as also the agreement of Kishenchunder to pay the balance due, the principal sudder ameen gave a decree against the two widows, Musstn. Kishoree and Musst Anundmei, declaring that execution should first issue against Musst. Kishoree, and, on failure on her part to liquidate the whole, against Musst. Anundmei.

From this order Musst. Kishoree appeals, urging that, as Kishenchunder had taken the responsibility of the bond upon himself, she was not liable, but Anundmei; and that if the principal sudder ameen considered her responsible he ought to have given a joint decree against her and Musst. Anundmei, and not have made her, the appellant, responsible in the first instance.

In the bond it is distinctly stated that the money was borrowed for, and on behalf of Gokulchunder, and no proof has been given that it was applied to the payment of the rents of Kishenchunder's talook. But even if it were proved, this would not release the widow of Gokulchunder from the respondent's claim; she would be still answerable to him, and might have her remedy against Kishenchunder's estate.

The agreement, or ikrar, urged by the appellant as having been executed by Kishenchunder to the acquittance of herself of all responsibility, is simply a security bond, and states that "whereas my brother, Gokulchunder, had borrowed from you (*i. e.* respondent,) the sum of rupees 500, I, as surety, agree to pay the amount."

The decision of the principal sudder ameen is, under these circumstances, in my opinion, correct in all its parts, and I therefore affirm it, and dismiss the appeal with costs.

THE 13TH MAY 1848.

No. 284 of 1847.

*Appeal from the decision of Moulvee Guda Hussein, Town Moonsiff,
dated the 30th April 1847.*

Ramdyal, Auction Purchaser, Appellant,

versus

Asghur Ally, Respondent.

THE respondent states that he has long cultivated 1 kanee, 17 gundahs, 2 cowrees of land, in the turuf purchased by the appellant at the annual rent of rupees 3-12; but that the appellant has forcibly taken from him a kubooleut for rupees 4, and also an excess of rent.

The appellant pleads that he is auction purchaser of the turuf in which the respondent's land is situated, which is 2 kances, 13 gundahs; and that he has voluntarily given the former proprietor a kubooleut for that amount of land at an annual rental of rupees 4-8.

The moonsiff in his decree states that the respondent has failed to prove that the appellant has forcibly taken any kubooleut from him for rupees 4; but that he has proved that he only cultivates 1 kanee, 17 gundahs, 2 cowrees of land in the appellant's turuf, and for which after a comparison of accounts it would appear that the appellant has taken 1 rupee, 9 annas, 6 pie, rent in excess of the proper rate, and this amount he decreed.

The appellant filed the kubooleut, alleged to have been voluntarily executed to the former proprietor of the turuf, Mohamud Shureef, for 2 kanees 13 gundahs of land, at the annual rental of rupees 4-8, but took no sufficient measures for procuring the attendance of his witnesses to prove it.

In his petition of appeal he has assigned no reasons for his neglect; and as the moonsiff's decision appears in all respects just and equitable, I confirm it, and dismiss the appeal.

THE 16TH MAY 1848.

No. 3 of 1847.

*Appeal from the decision of Baboo Opendar Chunder Neyaruttun
Pundit, Second Principal Sudder Ameen, dated 23rd July 1847.*

Yoosoof Khan, Shere Khan, Hyder Ally, and others,

(Defendants,) Appellants,

versus

Kaleenath Bundopadeh, (Plaintiff,) Respondent.

THE respondent claims 11 kanees, 5 gundahs of land, which he states belongs to turuf Ahson Mussood Khan, purchased by his

brother at auction in the year 1195, and whom he succeeded in 1198, which land has been erroneously entered in the collector's measurement papers of 1127 and 1129, as part of the rent-free tenure of Jumrood Khan, the property of the appellants, and he therefore brings this action to obtain possession of it, together with the mesne profits at the rate of rupees 3 per kanee for the period of 12 years.

The appellants pleaded: 1st, that the land has never formed part of turuf Ahson Mussood Khan, but has always been a portion of the rent-free tenure inherited by them from Jumrood Khan, the original grantee; 2nd, that the land has been divided into separate portions among the proprietors, and that consequently the respondent cannot legally sue them all in one action; 3rd, that the original proprietors of turuf Ahson Mussood Khan have never had possession of the land, and that consequently the respondent, who, as auction purchaser, succeeded to their rights only, cannot legally urge a claim to it; and 4th, that though the respondent lays his claim for mesne profits at the rate of 3 rupees per kanee the land only lets for 1 rupee 4 annas.

The principal sudder ameen in his decision says that the question to be decided is whether the land claimed forms part of the turuf or part of the rent-free tenure, and, for reasons recorded in his roobacarree, decided that it was originally part of the turuf; and he therefore decreed that the respondent should be put in possession, and that the question of mesne profits should be determined upon the issue of the decree.

The appellants, dissatisfied, urge that the first plea set forth by them has been wrongfully decided against them upon documents utterly unworthy of credit; and that no decision had been given upon the last three pleas advanced by them.

The roobacarree of the principal sudder ameen does not allude to the 2nd and 3rd pleas of the appellants, though it may be presumed, as he proceeded to trial, that he set them aside, and it distinctly sets forth that the decision of the 4th plea has been reserved till the issue of the decree.

The appeal therefore was admitted on the 3rd of April last to ascertain whether the respondent's claim is cognizable or not in its present shape. To day the appellant's pleader stated that he had no proofs of the separation of the interests of the proprietors, and indeed the evidence filed in the case shews that that they are joint proprietors. The respondent says that as successor to an auction purchaser he can file no exhibits to prove that the former proprietors took rents for the lands claimed, though it is proved that they did so by oral testimony, and that moreover as heir to the auction purchaser he may sue for whatever he considers his rights within twelve years from the date of sale.

As the suit is clearly cognizable, and the investigation of the principal sudder ameen incomplete, and contrary to the precedent laid down in the 6th vol. of the Sudder Dewanny Reports, in the case of Sheebchunder Roy and another *versus* Hurmohun Roy and others, dated 2d December 1840, I reverse the principal sudder ameen's decision, and return the case for re-investigation.

The appellants is entitled to the value of his stamp, and the costs of appeal will be determined upon the final decision of the case.

THE 22D MAY 1848.

No. 6 of 1847.

Appeal from the decision of Baboo Opender Chunder Nayaruttun Pundit, Second Principal Sudder Ameen, dated the 28th September 1847.

Musst. Nunnee Beebee and Luckee Beebee, Appellants,

versus

Mahomed Shufee, Respondent.

THE respondent states that his brother, Mahomed Rufee, borrowed rupees 1,200 of him on the 2d Magh 1203, and died without having liquidated the debt, leaving three wives, Musstn. Noor Beebee, Nunnee Beebee, and Beejan Beebee, and a grown up daughter, Luckee Beebee, and some very young children under their charge, in possession of his property.

The three wives and daughter plead that Mahomed Rufee borrowed the sum of rupees 800 from the respondent in 1204, but that he repaid it in 1205, obtaining a receipt in full; that this receipt was in a box in the house; and that after his death the respondent and others attacked the house and carried it off.

A deed of compromise being filed on the part of the appellants and Noor Beebee and Beejan Beebee, the principal sudder ameen gave a decree for the sum of rupees 1,906-4, agreeably thereto; and against this decision Nunnee Beebee and Luckee Beebee have appealed, urging that the compromise was not duly executed by them; and that it had been filed on their behalf by a vakeel of the court in collusion with the respondent, who was unable to prove his claim. Had they filed it, they would have filed it through their constituted vakeels. From a perusal of the record it appears that one Abdool Ghunee, purporting to be the mookteer of the appellants, and Noor Beebee, and Beejan Beebee, appointed Moonshee Bhobun Mohun, on the 8th January 1847, a vakeel on their behalf for the express purpose of filing a deed of compromise; and that agreeably to his instructions he did file one, purporting to have been executed by his clients, on the 27th April; that in consequence of their sex, an ameen was deputed to enquire whether they had voluntarily

executed the deed, and that he reported on the 29th May that Musst. Noor Beebee had declared that she was no party to the compromise, as Mahomed Ruffee, a merchant, and Mahomed Deini, nazir, had not arbitrated in the case. He further reported that he had not seen Musst. Nunnee Beebee, Luckee Beebee, and Beejan Beebee, as they did not reside in the village to which he had been deputed.

On the 2d of June all the four ladies presented a petition to the principal sudder ameen, stating that although they had expressed their willingness to submit the case to arbitration they had never executed the deed of compromise filed, nor authorised any one to file it on their behalf, and that they objected to its contents. No orders were passed upon the petition, which was filed in the record, and during the month of August both parties produced their witnesses, who gave their evidence in the case.

On the 28th September 1847, the principal sudder ameen, without alluding to the evidence adduced subsequent to the filing the deed of compromise, or taking evidence as to its execution, declared it valid, and gave a decree accordingly.

The soolehnamah was signed and written by Mahomed Yoosoof, one of the vakeels constituted by the appellants and the absent defendants to prosecute their case, and was filed by moonshee Bhobun Mohun, appointed by Abdool Gunnee, the brother of Mahomed Ruffee, deceased, and Mahomed Shuffee, the respondent; but he does not appear to have any power of attorney or other warrant for doing. The appellants objected to the terms of it before the decree was given, and both they and the respondent have shewn that they did not consider it binding upon them, for they both prosecuted the suit in the court of the principal sudder ameen in August, notwithstanding that the deed of compromise was filed in June. The deed cannot be enforced.

Two of the defendants in the original suit have not appealed, but as there is no specification in the decree of the responsibility of each party, they cannot be exonerated from the effect of a reversal thereof, agreeably to the precedent of the Sudder Dewanny Court, dated 5th June 1847, in which Molook Chund Lal was appellant and Purusdee Sirdar and others respondents. I therefore reverse the decision of the principal sudder ameen, and return the case to him that he may decide it on its merits. The appellants are entitled to receive back the value of the stamp.

Since Mahomed Yoosoof appears to be the father-in-law of Luckee Beebee, one of the appellants, the principal sudder ameen is further desired to enquire into this point, and also to call upon Abdool Ghunee to produce his warrant for filing the soolehnamah on behalf of the appellants, and to report the result of his enquiries to this court within the period of one month from this date.

THE 23D MAY 1848.

No. 452 of 1847.

Appeal from the decision of Moulvee Guda Hussein, Moonsiff of first Town Division, dated 31st July 1847.

Ahmud Ally, (Defendant,) Appellant,

versus

Musst. Noor Jan, (Plaintiff,) Respondent.

THE respondent, who is the wife of appellant, sued him for rupees 12-8 annas, maintenance, being at the rate of 10 annas a month for the period of one year and eight months.

The defence set up was that the respondent had left the appellant's house, and was leading an abandoned life.

From the evidence of both parties it was fully established that the appellant turned his wife out of doors, and that she had ever since been living with her father and mother, and the moonsiff accordingly decreed the amount sued for.

The appellant, in his appeal, urges that only two out of his five witnesses were examined by the moonsiff, and it appears from the record that such was the case, but that the appellant took no measures to procure the attendance of the three absent witnesses, although they had been duly served with a subpoena. I therefore confirm the moonsiff's decision, and dismiss the appeal.

THE 23D MAY 1848.

No. 454 of 1847.

Appeal from the decision of Moulvee Guda Hussein, Moonsiff of first Town Division, dated 30th July 1847.

Bhyrub Chunder, Appellant,

versus

Dewan Ally and others, Respondents.

THE appellant brought an action for the value of a bond for rupees 100, said to have been executed on the 17th Magh 1201, by the respondent's father, and one Kubeer Mahomud, payable on the 30th Cheit.

The respondent, Dewan Ally, denied the execution of the bond by his father, and stated that his father died before the date of the bond. The defendant, Kubeer Mahomud, did not defend the suit.

The moonsiff stated in his decision that only one witness to the bond bore testimony to it, and one accidentally standing by, but that the others denied all knowledge of it, and he therefore dismissed the suit, especially as the names of three witnesses appeared to have been very recently written upon the bond.

The appellant urges that as two witnesses have proved the bond he is entitled to a decree; and that moreover he gave in a supplementary list of witnesses, whose depositions had not been taken, but who would have proved that subsequent to the action the respondent had offered to compromise the suit.

There were the names of six witnesses on the bond of whom two are dead, and of the other four the names of three appear, as the moonsiff says, to have been very recently written upon the face of the bond.

Of these one witness, Shumsheer, says, he did not see any bond executed or money paid, but the appellant told him he had written his name as a witness upon a bond. The second, Munoo, says, a bond was executed, but that no money passed between the parties, and that the bond had reference to a talook. The third, Goureechurn, denies all knowledge of the transaction whatever; and though the fourth, Bacharam, states that the bond was executed and the money paid, he cannot recollect who affixed his signature or mark to the bond for him.

The appellant, on finding that his case was not supported by the evidence, petitioned the moonsiff to be allowed to file a supplementary list of witnesses, and permission was granted him. A subpoena was served upon all, but only one attended; and the appellant took no steps for procuring the attendance of the others. Ramjeebun, who attended, deposes that he witnessed the transaction, having accompanied Goureechurn to the spot; but Goureechurn declares he knows nothing about the matter at all. I therefore dismiss the appeal.

THE 23D MAY 1848.

No. 455 of 1847.

Appeal from the decision of Moulvee Guda Hussein, Moonsiff of first Town Division, dated 30th July 1847.

Bhyrub Chunder, Appellant,

versus

Dewan Ally, Respondent.

THIS was an action for the value of a bond for rupees 100, said to have been executed on the 17th Magh 1201, at the same time, and under the same circumstances, as the bond mentioned in No. 454, only payable on the 30th Falgoon.

As the evidence adduced in this case is precisely similar to that produced in No. 454, a recapitulation is unnecessary, and I therefore dismiss the appeal.

THE 23D MAY 1848.

No. 463 of 1847.

Appeal from the decision of Moulvee Guda Hussein, Moonsiff of first Town Division, dated the 30th July 1847.

Dewan Ally, Appellant,

versus

Bhyrub Chunder, Respondent.

THIS appeal is connected with the above No. 454, and is brought in consequence of the moonsiff's deciding that he should pay his own costs, although the respondent's claim had been dismissed.

The moonsiff does not give any special reason for departing from the usual practice of the courts of allowing costs, but merely says, "with reference to the features of the case, I decide that each party shall pay his own costs;" but as the respondent altogether failed in proving his claim, I am of opinion that the appellant is entitled to his costs, and I therefore amend the moonsiff's decision, and decree the costs in the moonsiff's court, incurred by appellant, amounting to rupees 8-13-7, with interest, from the date of the moonsiff's decision to the date of realization, and also the costs of appeal, with interest from this date to the date of realization, to be paid by the respondent.

THE 23D MAY 1848.

Appeal from the decision of Moulvee Guda Hossein, Moonsiff of first Town Division, dated 30th July 1847.

No. 464 of 1847.

Dewan Ally, (Defendant,) Appellant,

versus

Bhyrub Chunder, (Plaintiff,) Respondent.

THIS was an appeal from the decision of the moonsiff, in case No. 455, inasmuch as he had not allowed the appellant's costs.

As the reasons for allowing the appellant's costs are precisely the same as those recorded in case No. 463, and the costs are the same, a recapitulation is unnecessary.

I amend the moonsiff's decision, and decree the costs in moonsiff's court, amounting to rupees 8-13-7, incurred by the appellant, with interest from the date of the moonsiff's decision to the date of realization, and also the costs of appeal, with interest from this date to the date of realization, to be paid by the respondent.

THE 27TH MAY 1848.

No. 460 of 1847.

Appeal from the decision of Kheiroollah Shah Budukshance, Moonsiff of Zorawargunge, dated 29th July 1847.

Mohamud Warris, Appellant,

versus

Kumer Ally and Ramkunt, Respondents.

THE appellant brought this suit to reverse the collectorate measurement papers of the year 1845, with regard to 6 kanecs, 15 gundahs, 3 cowries, belonging to his turuf Luckeenarain, which had been erroneously recorded as belonging to turuf Gunga Azeem.

The respondents pleaded that the land belongs to their turuf Gunga Azeem, and not to turuf Luckeenarain.

The moonsiff, in his decision, states that, since the appellant sues to recover the papers of 39 dags of land, situated in various mouzahs, his claim is inadmissible, and he therefore dismissed it.

The question to be decided is, does the land claimed belong to turuf Luckeenarain or turuf Gunga Azeem? and it is immaterial whether the land is recorded in one or a thousand dags, or situated in one or a hundred mouzahs, so long as they are recorded in the respondents' name, or in their possession. I reverse the moonsiff's decision, and return the case for investigation.

The appellant is entitled to the value of his stamp.

THE 29TH MAY 1848.

No. 457 of 1847.

Appeal from the decision of Kheiroollah Shah Budukshance, Moonsiff of Zorawargunge, dated the 29th July 1847.

Mohamud Warris, Appellant,

versus

Kumer Ally and Ramkunt Chowdrie, Respondents.

THE respondents brought an action in the collector's court for the rent of the land which formed the cause of action in No. 460, and their suit was dismissed by the deputy collector on the 31st August 1846. They appealed to the officiating collector, who reversed the decision on the 15th January 1847, and decreed the amount claimed by them.

From this decision Mahomed Warris appealed to the officiating commissioner, who, on the 11th February 1847, recorded his opinion that as a suit was pending in the moonsiff's court for the

land for which the rent was claimed, both decisions were irregular ; and he therefore reversed them, and under Section 15, Regulation VIII. of 1831, sent the case to be decided by the moonsiff.

The moonsiff issued notice of the change of venue, and recorded his opinion that, as it was proved by the evidence taken before the deputy collector that the appellant was in possession of the land, he was liable for the rent, especially as his suit for reversing the measurement papers of the land had been dismissed.

The proceedings of the revenue authorities and the moonsiff appear to me to be irregular. When the action was first instituted in the collector's office, the suit for the land had not been instituted in the moonsiff's court. It was instituted, however, one month previous to the decision of the deputy collector, and a petition was presented to him, praying that the suit pending before him might be transferred to the moonsiff for decision. Upon that petition no orders were passed, no mention of the suit pending before the deputy collector was made in the plaint filed in the moonsiff's court, but had it been, he could not have referred the suit instituted in his court to the collector, as the matter was not cognizable by him.

One appeal only is allowed by Regulation VIII. of 1831 from a summary decision regarding rent, to the commissioner, yet in this case there were two, one from the decision of the deputy collector to the officiating collector, the other from the decision of the officiating collector to the officiating commissioner. The appeal, however, from the deputy collector's decision to the collector was irregular, for although the proceedings of a deputy collector are under the provisions of Section 22, Regulation IX. of 1833, subject to the revision and control of the collector, they are appealable only to the superior authorities in the usual course.

Under Section 4, Regulation VIII. of 1831, a commissioner can only reverse a collector's decision on the ground of irrelevancy, but when, as in this suit, the regulation is applicable, the parties should bring their action to reverse the collector's decision in a civil court. Section 15 of the same Regulation does not invest a commissioner with any authority to transfer a case on appeal to a civil court after the collector's decision has been given, but empowers a collector to do so before the investigation is completed. The transfer of this case therefore was irregular. The moonsiff's proceedings are contrary to the established practice of the civil courts, for he has decided the case solely upon the evidence taken before the revenue courts.

Had it been possible, I am of opinion that the proper course to pursue would be to reverse the moonsiff's decision, and allow the appellant to bring his action to contest the collector's decision; but this cannot be, as the institution of such suit is limited to a

period of one year, which in this case has long elapsed. The appellant, however, cannot in equity be allowed to be injured by the proceedings of the revenue courts, and I therefore remand the case to the moonsiff that he may take evidence to the facts *de novo*.

The appellant is entitled to the value of the stamp of his appeal.

THE 29TH MAY 1848.

Appeals from the decision of Opendar Chunder Roy Neyaruttun Pundit, dated the 17th January 1848.

No. 3.

Mohomud Morad, (Defendant,) Appellant,

versus

Ram Chunder and Ramjei, Respondents.

No. 5.

The Additional Collector of Chittagong, (Defendant,) Appellant,

versus

Ramchunder and Ramjei, Respondent.

No. 6.

Ramchunder and Ramjei, Appellant,

versus

Mohomud Morad and The Additional Collector of Chittagong, Respondents.

THE plaintiffs in this suit, Ramjei and Ramchunder, sued to obtain possession of 7 kanees, 4 gundahs of land in the possession of Mohomud Morad, belonging to their turuf Munooroy, and recorded as such in the collectorate measurement papers, dated the 17th and 20th Bysack 1127, in various dagns named in their plaint; and to reverse the measurement of 1 kanee, 17 gundahs, 3 cowrees of land recorded in the same papers in the name of Mohomud Morad, as nowabad and lakhiraj, although it is part of their turuf of Munooroy.

The defendant, Mohomud Morad, pleaded that all the land claimed belongs to him, and is situated partly in turuf Nazir Mohomud, and partly in a rent-free tenure, called Nazir Mohomud and Mohomud Yar.

The additional collector pleaded that he is indifferent as to which turuf the land may be proved to belong to.

The principal sudder ameen, in his decision, states that the land is proved to belong to turuf Munooroy; and he therefore decrees possession of it to the plaintiffs, with mesne profits and interest

thereon from the date of the decree to realization, and declares the measurement papers of the land in question wherever it may have been recorded, reversed.

From this decision all three parties have appealed, the defendant Mahomed Morad in No. 3, on the ground of the decision being contrary to evidence,—the additional collector in No. 5, on the ground of the decrees not being sufficiently explicit, urging that unless the dags are specified he will not know what land to relinquish,—and the plaintiffs in No. 6, on the pleas that they have been saddled with the costs of the collector, and have not been allowed interest from the date of their claim, but only from the date of the decree.

As the principal sudder ameen has not specified the dags nor the dates of the papers he has ordered to be reversed, the execution of his decree would be impossible even if confirmed. He has not allowed the plaintiffs interest from the date of their claim, and has not recorded any reason for omitting to do so. His investigation, therefore, and decision must be deemed to be incomplete, and I accordingly reverse it, and desire that he will distinctly specify the dates of the measurement papers and the numbers of the dags he proposes to reverse, distinguishing the lands claimed as turuf and as lakhiraj, and that he will also review his order regarding the interest to be allowed to the plaintiffs.

The appellants are entitled respectively to receive back the value of their stamp paper.

PRESENT : W. J. H. MONEY, Esq., ADDITIONAL JUDGE.

THE 3D MAY 1848.

No. 452 of 1847.

Appeal from the decision of Mr. Snell, Moonsiff of Deeang, dated the 20th July 1847.

Oomur Alli, (Defendant,) Appellant,

versus

Asmut Alli, (Plaintiff,) Respondent.

THE plaintiff sued to recover from the defendant, on account of loan, the sum of twelve rupees with interest. The defendant admitted having borrowed nine rupees, which had been repaid in the presence of witnesses. The plaintiff adduced no evidence, and as the defendant failed to produce any proof in support of the payment alluded to, the moonsiff decreed the sum of nine rupees acknowledged by the defendant, and I see no reason to disturb this order, which is hereby confirmed, and the appeal dismissed with costs.

THE 3D MAY 1848.

No. 461 of 1847.

Appeal from the decision of Syud Ahmed, Additional Moonsiff of Deeang, dated the 21st July 1847.

Ramjye Podar, (Plaintiff,) Appellant,

versus

Kalee Dass, Musst. Bishnoo Pareea, and Rammohun,
(Defendants,) Respondents. •

THE plaintiff sued to recover an ornament, which the defendant had borrowed on the occasion of his marriage, and which he now refused to deliver up. This statement was denied altogether by the defendant, who declared that he had purchased some ornaments from the plaintiff, which had been duly paid for. As the plaintiff failed to establish the fact of the loan of the ornament, the moonsiff dismissed his claim, in which order I concur. The appeal is dismissed, and the moonsiff's order confirmed.

THE 4TH MAY 1848.

No. 6 of 1847.

*Appeal from the decision of Moulvee Ashruff Alli, Principal Sud-
der Ameen, dated the 29th July 1847.*

Hurlall Mohunt, (Defendant,) Appellant,

versus

Musst. Reshum Beebec and Abdool Alli, wife and son of Goomanee Darogah, (Plaintiffs,) Respondents.

THE plaintiffs sued for possession of 5 canees of land, with mesne profits, to have the measurement paper corrected, and their own names recorded as proprietors.

Damages laid at rupees 476, 4 annas.

It appeared from their statement that the land in question, being a portion of land, called Khyrat Suntokee Dass and Narain Mohunt, in mouzah Chur Khizirpoor, pergunnah Nanukanuggur, was sold with other land to one Janoolla, who, on the 27th Bhadoon 1149 M. S., transferred it to Joomun, and he and his heirs, Sumud Alli, Shumsheer, Abdoolla, and Ahsunoolla, were in possession for a period of 39 years. These persons, again, on the 18th Aghun 1188 M. S. sold the land for 300 rupees to Sheik Goomanee, after whose death the plaintiffs have received the rent of the land up to the year 1198 M. S. As the defendant, at this time, without their knowledge, caused the name of Suntokee Dass Mohunt to be recorded in the Government measurement paper, for 4 canees, 6 gundahs, (instead of 5 canees,) they have been compelled to institute the present suit. The collector gave no reply in the case. Hurlall Mohunt denied the sale of the land in the first instance to Janoolla; and declared that the land and its profits were devoted to charitable purposes, and could not be alienated. The land consisting of 4 canees, 5 gundahs, 1 cowrie, was formerly in the talook of Joomun, who paid rent to the mohunts, and subsequently was in the cultivation of Abdool Alli, from whom he (defendant) had received rent. He added further that the land together with other land had been confirmed as rent-free, and released from the payment of Government revenue. Abdoolla and Ahsunoolla supported the claim of the plaintiffs, who filed a copy of the deed of sale of Janoolla, dated the 27th Bhadoon 1149 M. S.; and also the deed given by the heirs of Joomun to Goomanee, dated the 18th Aghun 1188 M. S., together with an engagement for rent executed by the cultivators, dated the 22d Phalagoon 1188 M. S. The defendant filed a copy of the proceeding of the additional collector, dated the 10th April 1843, under which the land with other land had been confirmed as rent-free; and distinguished as "Khyrat Suntokee and Narain Dass Mohunt."

The principal sudder ameen did not consider the plaintiffs as proprietors of the land in dispute, which, he decided moreover, could not be legally alienated; but in consideration of their long possession he thought them entitled to some indulgence; he therefore directed the defendant, Hurlall Mohunt, to give up the land to the plaintiffs, grant them a lease at half the established rent, and pay the mesne profits and costs. The appellant recapitulated the objections urged in his reply, and alludes to the irregularity of the principal sudder ameen's order in which he grants to the plaintiffs what they did not in reality claim.

I concur with the principal sudder ameen in thinking that the respondents (plaintiffs) cannot be recognized as proprietors, as they have failed altogether to establish that right, for there is no proof whatever of the land having been sold in the first instance to Janoolla, that particular deed of sale not being forthcoming. I dissent, however, from the principal sudder ameen in considering the respondents (plaintiffs) worthy of any indulgence on the ground of their long possession, because they have attempted by fraudulent means to establish their proprietary right to the land, and preferred no claim at all for the settlement. Under these circumstances I decree this appeal, and reverse the principal sudder ameen's order, and the respondents will pay the costs of both courts.

THE 8TH MAY 1848.

No. 460 of 1847.

*Appeal from the decision of Zeenutoollah, Moonsiff of Noaparah,
dated 17th July 1847.*

Ramkishub, Ramdhun, and Ramsoonder, (Defendants,)

Appellants,

versus

Muklook Ruhman, Toorab Alli, Kumar Alli, and Munnecroonissa,
(Plaintiffs,) Respondents.

THE plaintiffs sued for possession of 4 gundāhs, 2 cowries of rent-free land, with the rent thereof, and interest. They represented that the land in question formed part of 4 droons, 13 canees, 2 gundāhs, 1 cowrie of rent-free land, belonging to their ancestor, Futteh Mahomed, which had at one time been resumed by the collector, and subsequently released by the special commissioner, and as the cultivators, Ramdhun, Ramkishub, and Ramsoonder, refused to pay rent, or give up the land, they (plaintiffs) were compelled to institute the present suit. The defendants, Ramdhun,

Ramkishub, and Ramsoonder, claimed the land on the strength of its having been purchased by their father and uncle from the ancestor of the plaintiffs; though their title deeds had been unfortunately destroyed by fire in the year 1183 M. S., they still based their claim upon the grounds of their long possession, for a period of 60 years. Mahomed Ahmud, Jesarut Khan, Mushurut Alli, Hyder Alli, and Doola Meea were intervening defendants, and claimed an interest in the land by virtue of their descent from Futteh Mahomed Chowdree. Ramjye supported the claim of the principal defendants on the score of the purchase alluded to, in which he also had an interest through his father. The plaintiffs filed documents in support of their statement, and the defendants filed a copy of a reply of Mahomed Kalin in some other case, in which he was said to have acknowledged that the ancestor of the defendants had purchased some land from him. The moonsiff, considering the claim of the plaintiffs to be substantiated, and that of the defendants, Ramdhun, Ramkishub, and Ramsoonder, to be unfounded, decreed in favor of the former. There is no doubt that the appellants have been in possession of the land for a considerable time, but as cultivators, not as proprietors, otherwise they would most certainly have preferred their rights when the land was in the first instance resumed, and subsequently released by the special commissioner. At the recent measurement, moreover, the land in question was recorded in the cultivation of Hurrechand, the father of the appellants, the respondents (plaintiffs) being distinguished as proprietors, and was further described as being a part of the rent-free land, called "Futteh Mahomed," in conformity with the measurement paper of the year 1126 M. S. Under these circumstances I confirm the moonsiff's order, and dismiss the appeal with costs.

THE 10TH MAY 1848.

No. 585 of 1847.

Appeal from the decision of Syud Ahmud, Additional Moonsiff of Deang, dated the 17th July 1847.

Mahomed Ruinoo, Talookdar, and Goureechurn, Cultivator,
(Defendants,) Appellants,

versus

Afazoollah *alias* Becha Gaze, (Plaintiff,) Respondent.

THE plaintiff sued for possession with mesne profits of 5 gundahs of land, forming part of 1 canee, 7 gundahs, 2 cowries of land, which had been measured in the name and as the property

of his father, but of which he had been dispossessed by the defendants under the pretence of its belonging to turuff Brij Kishore. The defendants contended that the land in dispute was included in 1 canee, 6 gundahs of land, which had been measured as belonging to turuff Brij Kishore. The moonsiff, after deputing three ameens to the spot, whose opinions were at variance and whose enquiries were unsatisfactory, decided that the land belonged to the plaintiff, and decreed in his favor.

Both parties admit that a certain quantity of land was measured in their possession at the recent measurement in particular plots distinct from each other; the ameens therefore should have measured those plots in order to ascertain where the excess or deficiency existed, and consequently to whom the land in dispute properly belonged. In consequence of this omission, the appeal is decreed, the moonsiff's order reversed, and the case returned for re-trial, and the moonsiff will depute a trustworthy ameen, approved, if possible, by both parties, for the purpose abovementioned, and then decide the case upon its merits.

The amount of stamp paper on which the appeal is engrossed, will be refunded to the appellant.

THE 10TH MAY 1848.

No. 558 of 1847.

Appeal from the decision of Kishen Chunder, Moonsiff of Issapore, dated 20th September 1847.

Koosha Ram Mallee, son of Doomun Mallee, (Defendant,) Appellant,

versus

Bindrabun Mallee, (Plaintiff,) and Ramsoonder, Eshanchunder, and Nitand, (Defendants,) Respondents.

THE plaintiff sued for a settlement of 14 gundahs, 1 cowrie of land in the possession of the defendant, Koosha Ram Mallee, on the ground of its having been included in his talook by the zemindars. These persons corroborated the statement; but Koosha Ram Mallee resisted the claim, and contended that he had previously received from the zemindars an etmamee lease of the land alluded to. The moonsiff, without calling for the lease mentioned by Koosha Ram, gave credit to the testimony of the zemindars, and decreed in favor of the plaintiff. As the enquiry is necessarily incomplete, the appeal is decreed, the moonsiff's order reversed, and the case returned for re-trial; and the moonsiff, after calling for the etmamee lease alluded to, will decide the case upon its merits. The amount of stamp paper on which the appeal is engrossed, will be refunded to the appellant.

THE 12TH MAY 1848.

No. 141 of 1847.

Appeal from the decision of Moulvee Hadee Alli, Moonsiff of Runguneeah, dated the 27th February 1847.

Rammunee Byde, (Defendant,) Appellant,

versus

Shakur Alli and Gourecchurn, (Plaintiffs,) Respondents.

THE plaintiffs sued to establish their right to 1 droon, 9 canees of land, forming part of 6 droons, 13 canees, formerly the etmamee tenure of Scetaram in talooka Sreemunt Ram Canoongoe, which had been sold to Mahomed Hossein and Gunnesham, the father of one plaintiff and the uncle of the other, but which the defendant claimed as belonging to the etmamee tenure of Tunnoo Ram. It was contended by the defendant that the land in question was included in the etmamee tenure of Tunnoo Ram, and formed part of 1 droon, 11 canees, 5 gundahs, for which his brother had obtained a decree in the year 1818. The plaintiffs filed the deed of sale upon which their claim was based, and the defendant produced a copy of the decree of the sudder ameen, awarding possession of 1 droon, 11 canees, 5 gundahs, 1 cowree of land to the heirs of Tunnoo Ram. The moonsiff, after deputing an ameen to the spot, considered the land to belong to the plaintiffs, and decreed in their favor. As the boundaries of the land described in the plaint, and in the former decree of the sudder ameen appeared to be similar, it was deemed advisable to depute an ameen, approved by both parties, to ascertain whether the land in dispute was really included in the boundaries recorded in the decree of the sudder ameen or not.

From the enquiry of this ameen it is evident that the land is included in that decree, and therefore the claim of the respondents (plaintiffs) cannot be supported. Under these circumstances I decree this appeal, and reverse the moonsiff's order. The respondents will pay the costs of both courts.

THE 12TH MAY 1848.

No. 143 of 1847.

Appeal from the decision of Moulvee Hadee Alli, Moonsiff of Runguneeah, dated the 27th February 1847.

Rammunee Byde, (Plaintiff,) Appellant,

versus

Gokool, Muddoo, Kesheea, Ryechn, and Musst. Soomitra,
and Deboo, (Defendants,) Respondents.

THE plaintiff sued for rent for 1 droon, 9 canees of land. The claim was resisted on the ground that the land had no connection

with the plaintiffs, but was included in the etmamee tenure of Shakur Alli and Gourcechurn. As this case is connected with the previous case No. 141, in which the land was declared to belong to the appellant, the same order is applicable. The appeal is decreed, and the moonsiff's order reversed. The usual order about costs.

THE 12TH MAY 1848.

No. 266 of 1847.

Appeal from the decision of Zeenutoollah, Moonsiff of Noaparrah, dated the 28th April 1847.

Shamut Alli, (Plaintiff,) Appellant,

versus

Sonaoolla, Shamooa, and Lall Mahomed, and the Collector of Chittagong, (Defendants,) Respondents.

THE plaintiff sued to cancel the assessment effected by Sonaoolla for 3 canees, 3 gundahs of land, and establish his right to 1 canee, 10 gundahs, out of 2 canees, 10 gundahs, which he declared to be rent-free resumed land. The land in question was claimed, upon the strength of his purchase,—from Shamooa, the brother of Sonaoolla, being his share of his patrimonial property,—by a deed of sale, dated the 27th Assin 1205 M. S. Shamooa and Sonaoolla both denied the fact of the sale. The collector replied that in the first instance 3 canees, 10 gundahs, 2 cowries of land had been measured, as rent-free, and 13 gundahs as noabad land; but when the measurement was subsequently tested, 3 canees, 3 gundahs of land were recorded as noabad, the settlement of which was effected with Sonaoolla. This case was connected with two other cases Nos. 267 and 268, in which the moonsiff rejected the deed of sale alluded to by the appellant Shamut Alli, for the same reasons, therefore the claim was dismissed in the present instance. The former orders of the moonsiff, however, were reversed in appeal, and in case No. 268, decided on the 28th January 1848, the deed of sale was duly upheld, and on that occasion it was considered that Shamooa and Sonaoolla had colluded together to vitiate that document. The claim of the appellant to change the designation of the land is of course out of the question, but he is entitled upon the strength of his deed of sale to receive 1 canee, 10 gundahs of land, out of the 3 canees, 3 gundahs noabad land in the possession of Sonaoolla. Under these circumstances I decree this appeal, reverse the moonsiff's order, and, amending the appellant's claim, direct that he receive possession from Sonaoolla of 1 canee, 10 gundahs of land, noabad, according to the boundaries described in his deed of sale. Sonaoolla will pay the costs of both courts of all parties.

THE 17TH MAY 1848.

No. 39 of 1847.

Appeal from the decision of Kishen Chunder, Moonsiff of Issapore, dated the 15th January 1847.

Kumul Gajur, (Plaintiff,) Appellant,

versus

Hyder Alli, (Defendant,) Respondent.

THE plaintiff sued to recover the amount proceeds of sale of his property, which had been illegally attached and sold for rent by the defendant, with whom he had no sort of connection. The defendant on the other hand filed an engagement for rent said to have been executed by the plaintiff; and the moonsiff, considering its validity established, dismissed the claim. As there is considerable discrepancy in the evidence of the witnesses to the execution of the engagement, and strong reasons exist for doubting whether the appellant had any land at all in his possession connected with the respondent, I decree the appeal, and reverse the moonsiff's order, and the respondent will refund the amount claimed, and pay the costs of both courts.

THE 17TH MAY 1848.

No. 311 of 1847.

Appeal from the decision of Mr. Snell, Moonsiff of Deeang, dated the 14th May 1847.

Shamut Alli and Baker Alli, (Defendants,) Appellants,

*versus*Mohsun Alli *alias* Mossookoolall, (Plaintiff,) Respondent.

THE plaintiff sued for possession of 2 canees, 8 gundahs, 2 cowries of land, to release it from mortgage, and obtain the rents collected in excess. He stated that the land had been mortgaged to Mahomed Juma by his father for 44 rupees, by a deed dated in the month of Assin 1173 M. S., on the condition that the land should be restored when the money was liquidated. The defendants denied the mortgage altogether, and declared that the land had been unconditionally sold. The plaintiff filed a copy of a proceeding of the deputy collector, dated the 10th June 1832, in which it was considered that the land had only been mortgaged, and his own proprietary right consequently established; and the moonsiff, being of the same opinion, decreed in the plaintiff's favor. In the following case No. 310 which is connected with this suit, the deed, dated the 26th Assin 1173 M. S., and which was

duly attested, distinctly shews the land in question to have been sold to Shamut Ali and Meena Gazee, the sons of Mahomed Juma; and is unaccompanied by any separate acknowledgment, from which it could possibly be inferred that the land had only been mortgaged. If such indeed had been the case, the land could have been redeemed in the course of eight years, even at the plaintiff's calculation of the annual profits, at the expiration of which period the plaintiff could have sued to recover his land. It appears incredible, therefore, that the plaintiff and his father should have remained silent for a further period of twenty-five years, without making any attempt of the kind. Under these circumstances I decree this appeal, and reverse the moonsiff's order.

THE 17TH MAY 1848.

No. 310 of 1847.

Appeal from the decision of Mr. Snell, Moonsiff of Deeang, dated the 14th May 1847.

Shamut Alli and Baker Alli, (Plaintiffs,) Appellants,

versus

Mohsun Alli *alias* Mossookoolall, Hossein Alli, and Azeem, (Defendants,) Respondents.

THE plaintiffs sued to cancel a measurement paper and proceeding of the deputy collector, regarding 2 canees, 8 gundahs, 2 cowries of land, and their claim was dismissed by the moonsiff. As this case is connected with the previous case No. 311, in which the land in question was declared to belong to the appellants, the same order is applicable. The appeal is decreed, the moonsiff's order reversed, and the proceeding of the deputy collector, dated the 10th June 1832, and the measurement paper relative to the land abovementioned, are cancelled, and the name of the appellant will be recorded in lieu of that of Mossookoolall.

THE 17TH MAY 1848.

No. 312 of 1847.

Appeal from the decision of Mr. Snell, Moonsiff of Deeang, dated the 14th May 1847.

Shamut Alli and Baker Alli, (Plaintiffs,) Appellants,

versus

Mohsun *alias* Mossookoolall, Hossein, Azeem, and the Collector of Chittagong, (Defendants,) Respondents.

THE plaintiffs sued to cancel the settlement effected with Mossookoolall for 2 canees, 8 gundahs, 2 cowries of land. The collector gave no reply in the case, which is similar to the pre-

ceding cases Nos. 310 and 311. The appeal is decreed, the moonsiff's order reversed, and the appellants will be entitled to the settlement effected with Mossookoolall, which is hereby cancelled.

THE 18TH MAY 1848.

No. 334 of 1847.

Appeal from the decision of Zeenutoollah, Moonsiff of Noaparah, dated the 20th May 1847.

Musst. Khorisha Beebee, (Plaintiff,) Appellant,

versus

Mahomed Tukee, (Defendant,) Respondent.

THE plaintiff sued to recover rent from the defendant on the strength of an engagement which he had executed for 2 canees of land, which her husband's father, Pela Gazee Manjee, had purchased in the year 1167 M. S., and had subsequently transferred to her by a deed of gift. The defendant resisted the demand, and denied all connection with the plaintiff; he further stated that he had purchased 8 gundahs, 1 cowrie of land from Musst. Poojee, which he retained in his possession for many years, and then afterwards transferred to Ramdass Podar. Although the plaintiff filed the deed of sale, dated the 22d Asar 1167 M. S., for 2 canees of land, sold by Musst. Poojee, and the engagement for rent signed by the defendant, dated the 5th Bysack 1177 M. S., and her claim was corroborated by witnesses, the moonsiff dismissed the case, because the witnesses to the documents above mentioned were dead. As, however, the respondent (defendant) has failed to produce any evidence in support of his alleged purchase from Musst. Poojee, and refute the appellant's claim, I am of opinion the appeal must be decreed, and the moonsiff's order reversed, and the respondent will defray the appellant's claim and costs of both courts.

THE 18TH MAY 1848.

No. 431 of 1847.

Appeal from the decision of Syud Ahmed, Additional Moonsiff of Deeaing, dated the 2d July 1847.

Sheikh Obeedoolla Khan and Musst. Dewan Beebee, (Defendants,) Appellants,

versus

Sreemunt Ram, Mogulchand, Aytun, Bindrabun, and Teeta Ram, (Plaintiffs,) Respondents.

THE plaintiffs sued to cancel the summary order of a deputy collector and an engagement for rent, and recover the amount

illegally collected. They represented that the defendants were sharers in turuff Zuburdust Khan, and the amount of rent for which they were responsible to them consisted of rupees 1-15-10 cash, and 6 arees and 6 seers of rice; the defendants, however, claiming rent for 14 canees, 16 gundahs, 1 cowrie of land, which they declared to be in their possession in excess, extorted an engagement from them by force to the amount of rupees 18-8, on the 17th Chyte 1201 M. S., upon the strength of which the defendants sued them under Regulation VII. 1799, and gained a decree from the deputy collector, which was duly executed, and rupees 41-2-6, illegally exacted from them. The defendants replied that the plaintiffs acknowledged having in their possession 1 droon, 2 canees, 1 cowrie of land belonging to their share in turuff Zuburdust Khan, and accordingly executed a settlement with them for that amount of land at a rent of rupees 23-1, and 6 arees, 6 seers of rice. This settlement was duly filed by the defendants, but the witnesses for the plaintiffs declaring that the engagement had been extorted by force, the moonsiff decreed in their favor. It appears that the engagement, to which the respondents object, was executed in the year 1240, and the summary order of the deputy collector is dated in 1243, and the present suit was instituted in the year 1844. If therefore the engagement had really been extorted by force, it seems strange that the respondents should not have preferred a complaint long ago; their silence, therefore, till they are made to pay rent, renders their objections in the present instance very suspicious, and I cannot consider them well founded. Under these circumstances I decree the appeal, and reverse the moonsiff's order, upholding the engagement and the summary order of the deputy collector which was founded upon that instrument. The respondents will pay the costs of both courts.

THE 18TH MAY 1848.

No. 432 of 1847.

Appeal from the decision of Syud Ahmed, Additional Moonsiff of Deeang, dated 3rd July 1847.

Sayera Beebee, (Defendant,) Appellant,

versus

Mulka Beebee, (Plaintiff,) and Zeenut Alli Khan, Akbur Alli Khan, and Bindrabun, (Defendants,) Respondents.

THE plaintiff sued for possession of a reservoir comprising 2 canees of land, included in her husband's (Domun) cultivation in mouza Gobaddea, formerly talook Fokeerchund, and lately talook Ramjye and Bindrabund. Bocha Gazee replied that the reservoir was in talook Nowazish, and when the rights and interests of

Domun cultivator were disposed of, Aleear Khan became the purchaser, and then Sayera Beebee, who settled with him for the same. Mobaruk Alli replied to the same purport, and declared that the disputed reservoir was in the cultivation of Hyder Alli. Kooleen asserted that there were four reservoirs, one in the possession of the plaintiff in turuff Asalut Khan Choudree, three others in turuff Kala Beebee, talooka Nowazish, of which one belonged to himself and the other two to Bocha Gazee, Hyder Alli, and Bux Alli, Zeenut Alli, and Akbar Alli Khan; and Bindrabund supported the plaintiff's claim. Sayera Beebee declared the disputed reservoir to be in talook Nowazish, which had been purchased by Aleear Khan, and then transferred to her on the same date. The moonsiff, considering the reservoir to have been in the possession of the plaintiff and her husband, decreed in her favor against Sayera Beebee. From the evidence adduced it appears that the disputed reservoir was in talook Nowazish; and although Domun (the respondent plaintiff's husband) and other cultivators were in the habit of catching the fish, the reservoir itself was considered the property of Nowazish; and as that talook was afterwards sold and purchased by Aleear Khan, and then transferred to the appellant, she is clearly entitled to the possession of the disputed reservoir. I decree the appeal, and reverse the moonsiff's order, and the respondent will pay the costs of both courts.

THE 22D MAY 1848.

No. 447 of 1847.

Appeal from the decision of Mr. Snell, Moonsiff of Deeang, dated the 9th July 1847.

Sheer Alli *alias* Sheroo and Abkur Alli, (Defendants,) Appellants,
versus

Musst. Noorjemal, (Plaintiff,) Respondent.

THE plaintiff sued to recover 40 arees of rice on the following grounds. She stated the defendants about five years ago borrowed from her husband 80 arees of rice without any written acknowledgment, to be repaid in six months; her husband died in the year 1206 M. S., leaving herself and his sister as his heirs, and she now accordingly sued for her portion, the half of what was due. The defendants denied the transaction, but the moonsiff, merely upon the testimony of witnesses, who deposed that they heard the defendants admit the justness of the claim, decreed in plaintiff's favor. Although, according to the respondent's (plaintiff's) statement, the rice was to be repaid in six months, it does not appear that her husband before his death made any attempt to recover it, nor indeed does the plaintiff herself till some time after

his death ; and as no mention is made of the specific date on which the loan was contracted, I consider the claim to be unfounded. The appeal is decreed, and the moonsiff's order reversed.

THE 22D MAY 1848.

No. 256 of 1847.

Appeal from the decision of Mr. Snell, Moonsiff of Deeang, dated the 23d April 1847.

Musst. Chunder Kulla, (Defendant,) Appellant,

versus

Golukchunder Doss, (Plaintiff,) Respondent.

THE plaintiff sued for the value of a cow-house, which was destroyed by the defendant's husband, and which had been erected upon the portion of ground for which he (plaintiff) had previously gained a decree against him. The defendant resisted the claim entirely, but the moonsiff, considering the plaintiff entitled to the value of the house, which had been erected upon his own ground, decreed in his favor to the extent of ten rupees, and I see no reason to disturb this order, which is hereby confirmed, and the appeal dismissed with costs.

THE 23D MAY 1848.

No. 478 of 1847.

Appeal from the decision of Mr. Hutchinson, Moonsiff of Putteeah, dated 21st July 1847.

Madhoo Ram, (Defendant,) Appellant,

versus

Ramhurree, (Plaintiff) and Lall Chand, son of Poolchand, (Defendant,) Respondents.

THE plaintiff sued for possession of 11 canees, 10 gundahs, 1 cowrie of land, with mesne profits, and to cancel an order of the deputy magistrate in a case for dispossession. He stated that he had purchased, at the collector's office, talooka Rammanik Sirdar, turuff Goureechurn Canoongoe, which had been sold for arrears of rent, comprising 1 droon, 8 canees, 2 gundahs, 2 cowries of land, and obtained a talookee lease of the same from the zemindar ; but there were 8 canees of land in the possession of Madhoo Ram, and his son Ramsing, and Turahee Ram, and 3 canees of land in the possession of another person, called " Owla," for which he (plaintiff) could neither obtain a settlement or any rent ; and in a suit for dispossession these parties had gained a decree against him. Madhoo

Ram denied having any land belonging to the plaintiff's talook, and declared that he had purchased 1 droon, 3 canees, 10 gundahs of rent-free land from Shumboo Ram by a deed, dated the 6th Phagoon 1177 M. S., which at the recent measurement was incorporated with turuff Goureechurn Canoongoe, and recorded in his possession, and subsequently when Prem Chand became the auction purchaser of the turuff, he gave him (defendant) a talooke lease for the land alluded to. Ramsing replied to the same purport. Lall Chand, the brother of Prem Chand, deceased, supported the plaintiff's claim. The moonsiff, considering the plaintiff's purchase of talook Rammanik Sirdar to be fully substantiated by the official certificate of purchase, which he filled, and guided by the report of the ameen whom he deputed, and by the fact of the appellant on a former occasion having acknowledged having 13 canees, 10 gundahs of land in his possession, belonging to talook Rammanik, decreed in the plaintiff's favor to the extent of 8 canees of land. The respondent's purchase of talook Rammanik Sirdar is not questioned, but there is no proof that the contested land belongs to that talook, or was the very same portion of land which the appellant formerly acknowledged having in his possession on account of that talook, and the respondent, moreover, has not specified in what plots the land he claims is situated. The ameen's enquiry is defective, for, instead of measuring all the land enumerated in the measurement paper filed in this case, he contented himself merely with measuring 1 droon, 3 canees, 10 gundahs, 1 cowrie of land, out of which he decided upon the evidence of witnesses, that 11 canees, 10 gundahs, 3 cowries, 3 dunts, were in the possession of the appellant, on account of talook Rammanik; the other plots, which comprised about 11 canees of land, and, according to the appellant, constituted the very land which the respondent claimed as being in the appellant's possession, were not measured at all. As the investigation in consequence of this omission is incomplete, the appeal is decreed, the moonsiff's order reversed, and the case returned for re-trial, and the moonsiff will depute an ameen to measure the remaining plots recorded in the measurement paper filed in this case, and numbered, as noted

Nos. 296, 404, in the margin, for the purpose of ascertaining
 190, 191, 281, in whose possession that land is, and to what
 284, 455, 587, talook it belongs, and the ameen will at the same
 582, 584. time ascertain how much land the respondent
 (plaintiff) has in his possession on account of
 talook Rammanik. After the completion of the enquiry, the
 moonsiff will decide the case upon its merits. The amount of
 stamp paper, on which the petition of appeal is engrossed, will be
 refunded to the appellant.

THE 23D MAY 1848.

No. 283 of 1847.

*Appeal from the decision of Kishenchunder, Moonsiff of Issapore,
dated the 26th April 1847.*

Jugmohun Chowdree, (Defendant,) Appellant,

versus

Waris Khan and Chowdree Khan, (Plaintiffs,) Respondents.

THE plaintiffs sued to recover excess rent levied from them, under the following circumstances. They stated that they held 11 canes, 4 gundahs, 1 cowree of land, belonging to the defendant, called talook Waris Khan, Busharut Khan, Mogul Khan, Joomun Khan, Mujlis Khan, Jebun Khan, Musst. Tunnoo Beebee, and Assad Khan, at a rent of rupees 23, 15 annas, 13 gundahs, 3 cowries, and their shares were distinct and separate, both as regarded the quantity of land and the payment of rent; but the defendant, considering their lease joint and undivided, compelled them (plaintiffs) to pay what was due from their sharers, to recover which the present suit was instituted. The defendant, Jugmohun, contended that both the lease and the engagement were joint and undivided, and therefore he was justified in the course he had pursued towards the plaintiffs.

Sunnoo gomasta and Golukchunder tehsildar supported the zemindar's claim. The engagement and lease were both filed, the former specifying a joint, and the latter a separate responsibility; the execution of the former document was distinctly denied by the witnesses for the plaintiffs, who deposed to the correctness of the lease. The moonsiff, discrediting the engagement filed by the zemindar, and upholding the lease produced by the plaintiffs, decreed in their favor to the extent of 5 rupees, 14 annas, 18 gundahs, 2 cowries, with interest and costs. On looking at the lease it appeared that there was no allusion in the body of it to any separate responsibility, and it was clear that the detail at the bottom of the paper was added as an after thought; and as the moonsiff had not examined the writer of the lease or the engagement, they were summoned for that purpose to attend in this court. Although the writer of the engagement filed by the appellant, deposed to its authenticity, and the writer of the lease denies having added the detail of separate responsibility at the bottom of the paper, I am nevertheless inclined to believe it genuine, and it bears the stamp of truth, for if there had been any fraud intended on the part of the respondents they would not have

produced a document which was liable to suspicion, and with regard to which I did entertain doubts in the first instance. On the other hand the signatures of the respondents on the engagement are written by one Noorolla, who denies its execution, and as Waris Khan, one of the plaintiffs in the lower court has appeared and satisfied me that he can write without any difficulty, it is extremely improbable that his signature, and that of his sharers should have been written by a third party. Believing, therefore, that the engagement filed by the appellant is not the true one, and that the real instrument, which would have tallied with the lease, has been purposely kept back, I dismiss the appeal, and confirm the moonsiff's order.

THE 23D MAY 1848.

No. 284 of 1847.

Appeal from the decision of Kishenchunder, Moonsiff of Issapore, dated the 26th April 1847.

Jugmohun, (Plaintiff,) Appellant,

versus

Chowdree Khan, Waris Khan, Busharut Khan, Joomun Khan, Sunaolla, Ashruff, Budul Gazee, and Kala Gazee, (Defendants,) Respondents.

THE plaintiff sued to recover rent from the defendants, who adduced the same objections as in the former case No. 283, which is connected with this suit. The claim of the appellant, which was for a different year, having been dismissed by the moonsiff, the same order is therefore applicable. The appeal is dismissed, and the moonsiff's order confirmed.

THE 23D MAY 1848.

No. 285 of 1847.

Appeal from the decision of Kishenchunder, Moonsiff of Issapore, dated the 26th April 1847.

Jugmohun, (Defendant,) Appellant,

versus

Waris Khan and Chowdree Khan, (Plaintiffs,) Respondents.

THE plaintiffs sued to recover the value of cattle which had been illegally attached and sold, and gained a decree from the moonsiff. This case is also similar to the preceding cases Nos. 283 and 284. The appeal must be dismissed, and the moonsiff's order confirmed.

THE 23D MAY 1848.

No. 8 of 1847.

Appeal from the decision of Mr. Snell, Moonsiff of Deeang, dated the 12th December 1846.

Mobaruk Alli, Talookdar, (Defendant,) Appellant,

versus

Dowlut Khan and Meheroonissa, (Plaintiffs,) Respondents.

THE plaintiffs sued to cancel a summary decree of a deputy collector, and recover the amount of rent illegally exacted from them by the defendants, with whom they had no sort of connection. Mobaruk Alli and Hidayut Alli replied that 1 droon, 3 canees of land in turuff Mozufur Alli Ruheem, purchased by Usmut Alli, were in the possession of the plaintiffs, and were included in the talookee lease which they (defendants) had received from Usmut Alli: as the plaintiffs refused to make any settlement or pay rent, they were obliged to sue them under Regulation VII. 1799, and gained a decree for rent for 15 canees, 5 gundahs, 3 cowries of land. Usmut Alli, the auction purchaser, supported this declaration. From the report of an ameen when the moonsiff deputed to the spot, it appeared that 3 canees, 11 gundahs, 3 cowries, 2 krants of cultivated land were in the possession of the plaintiffs in turuff Mozufur Alli Ruheem. The moonsiff therefore decreed in favor of the talookdars to that extent at the rate of two rupees per canee, and ordered them to refund to the plaintiffs 23 rupees, 5 annas, 18 gundahs, 2 cowries, 2 krants. From a perusal of the papers, I see no reason to disturb this order, which is hereby confirmed, and the appeal dismissed with costs.

THE 23D MAY 1848.

No. 228 of 1847.

Appeal from the decision of Syud Ahmud, Additional Moonsiff of Deeang, dated the 7th April 1847.

Dowlut Khan, (Plaintiff,) Appellant,

versus

Usmut Alli, Hidayut Alli, and Mobaruk Alli, (Defendants,) Respondents.

THE plaintiff sued to cancel a summary decree of a deputy collector, and recover rent illegally exacted from him. This case is precisely similar to the preceding case No. 8, the only difference being that the rent claimed in this case was for the year 1204 M. S., and in the former instance for the year 1205 M. S. The same order is therefore applicable. The appeal must be dismissed, and the moonsiff's order confirmed.

THE 23^D MAY 1848.

No. 21 of 1847.

Appeal from the decision of Mr. Snell, Moonsiff of Deeang, dated the 12th December 1846.

Dowlut Khan, (Plaintiff,) Appellant,

versus

Usmut Alli, Hidayut Alli, and Mobaruk Alli, (Defendants,) Respondents.

THE appellant was plaintiff in the former case No. 8, and is dissatisfied because the moonsiff did not refund the whole amount of rent claimed by him. As it was clear from the report of the ameen that the appellant had 3 canees, 11 gundahs, 3 cowries, 2 krants of cultivated land in his possession, the moonsiff very properly decreed to that extent against him. The appeal is therefore dismissed, and the moonsiff's order confirmed.

ZILLAH CUTTACK.

PRESENT : E. DEEDES, ESQ., JUDGE.

THE 3D MAY 1848.
Case No. 104 of 1847.

Appeal from the decision of Moonshee Ghureeboollah, Moonsiff of Dhamnugur, passed on the 16th September 1847.

Dyaneedee Rai, (Defendant,) Appellant,

versus

Soonatun Dey, for himself and guardian of Dabakur Dey, his minor brother, (Plaintiff,) Respondent.

THIS action is brought by plaintiff for himself and as guardian of his minor brother, Debakur Dey, in the name of the defendants, Dyaneedee Rai, Mussumaut Kurpoora Dey, Neeladree Dey, for himself and guardian of Bhugwan, and Aruth Dey, the minor sons of Maun Dey, deceased, Chowdhree Narain Debootu Rai, Mudoo Dey, and Dursunee Santra, for right and possession on 8 annas of the zemindaree mouzah Umersingpoor, pergunnah Joor; and to substitute his own name in the collector's office in lieu of the names of Dyaneedee Rai and Mudoo Dey; and to reverse the order of the collector passed on the 27th December 1845, under which defendant's (appellant's) name has been entered in the collector's office as a 6 annas sharer in the zemindaree in question; and to reverse a further order of the collector passed on the same date, under which the name of Mudoo Dey has been inserted as a 2 annas sharer therein: the action being laid, including mesne profits, at 52 rupees, 11 annas, 2 pies. He states that the entire 8 annas of the zemindaree in dispute was the right of his father, Sudersun Dey; and that Maun, Neeladree and Mudoo Dey had no shares therein, and that the ruh-in-namah and deed of sale, produced by Dyaneedee Rai, defendant (appellant), under which he obtained possession on 6 annas of the zemindaree in dispute, are forged and fraudulent.

Dyaneedee Rai, defendant, denies the claim of plaintiff, and states that out of the 8 annas of the zemindaree in question, plaintiff's father, Sudersun Dey, had a 3 annas share, Maun and Neeladree Dey had a 3 annas share, and Mudoo Dey, 2 annas, and plaintiff's father borrowed, on the 28th Pous 1241, 50 rupees from Chowdree Narain Debootu Rai Mahapatur, his uncle, executing a bond for the same, and pledging his 3 annas share in the zemindaree as security; and after the death of Sudersun Dey, plaintiff's father, Musst. Kurpoora Dey, his mother, sold her 3 annas share in the

zemindaree to appellant (defendant) for the purpose of paying off the debt due under the ruhin-namah for 85 rupees, 8 annas, principal and interest, due under the bond abovementioned; and Maun and Neeladree Dey sold their 3 annas share in the zemindaree beforementioned for 66 rupees; and a deed of sale was executed by the sellers on the 28th January 1839; and on petitioning the collector for a mutation of names, and on the acknowledgment of the sellers, defendant's (appellant's) name was entered in the collector's office as a 6 annas sharer in the zemindaree.

Defendant, Musst. Kurpoora Dey, in her reply, denies having united with Maun and Neeladree Dey in the execution of the deed of sale. No reply was put in by the remaining defendants.

The moonsiff of Dhamnugur, being of opinion that the claim of plaintiff had been proved, and that the objections urged by defendant (appellant) had not been established, passed judgment accordingly. One of the defendants (appellant) preferred this appeal. In this suit, the point for enquiry is this, whether the entire 8 annas share in the zemindaree belonged to Sudersun Dey, plaintiff's father, alone, or, as stated by defendant (appellant,) plaintiff's father held a 3 annas share therein, Maun and Neeladree Dey a 3 annas, and Mudoo Dey a 2 annas share, and Musst. Kurpoora Dey, the mother of plaintiff, sold her 3 annas share in the zemindaree for the purpose of paying off her husband's debts, and Maun and Neeladree Dey sold their 3 annas share to appellant. But no documents have been produced from the collector's office, or mofussil papers of collections, or pottahs and kubooleuts of the ryots, to shew that 3 annas out of the 8 annas share in the zemindaree belonged to Maun and Neeladree Dey and 2 annas to Mudoo Dey, and that they were in possession thereof. It appears moreover that the 8 annas share in the zemindaree of Umersingpoor was for twenty-five years in khas management of the collector; and during that period plaintiff's father alone had received the malikanah of the 8 annas share from the collector, and no sufficient proof has been given by appellant (defendant) that Maun and Neeladree Dey and Mudoo Dey received any portion of the malikana from plaintiff's father, and the witnesses examined on the part of appellant to this point only state that they have heard that they received a part thereof. And since the right and possession of Maun and Neeladree Dey in 3 annas share in the zemindaree is not at all clear, therefore, notwithstanding this, plaintiff's mother should acknowledge their right and execute conjointly with them the deed of sale produced by appellant, is not to be relied upon, more especially when Musst. Kurpoora, in her answer, denies the execution of the deed of sale. Although two witnesses have been examined in proof of the deed of sale, but their evidence in respect to the payment of the amount due under ruhin-namah is conflicting, because Chundroo Panee, one of the witnesses, states that the amount

value of the 3 annas pledged property was paid to Narain Chowdree Debadoo Rai and Dyaneedee Das; the other witnesses state on the contrary that the mother of plaintiff took the cash from the purchaser, and paid it to Narain Debadoo Rai; further it appears that Chundroo Panee is a witness both to the ruhin-namah and the deed of sale, which is suspicious, because the ruhin-namah was executed in 1241, and the deed of sale, dated 17th Maugh 1246; and it is not probable that this witness should have been present and been a witness both to the ruhin-namah and the deed of sale. Moreover this witness states that he was going along the road to purchase rice, when he was called upon to be a witness to the deed, such evidence is not deserving of credit. The other witness to the deed of sale, Dyaneedee Das, it appears, was formerly a servant of appellant: his evidence therefore is undeserving of credit. Although two witnesses on the part of appellant have been examined to the payment of the value of plaintiff's father's 3 annas share in the zemindaree in satisfaction of the ruhin-namah; but their evidence cannot be relied upon, because if this had been the case, the ruhin-namah would have been reversed and returned to plaintiff's mother, or the amount paid thereon would have been written on the back of the bond; this has not been done, on the contrary the deed is still in appellant's hands; therefore there is every ground for believing that the statement of appellant and his witnesses is false. On the above grounds, the appeal is dismissed, and the decision of the lower court is affirmed, with costs of appeal payable by appellant.

THE 12TH MAY 1848.

Case No. 6 of 1847.

Appeal from the decision of Tarakaunth Bidyasagur, Principal Sudder Ameen of Cuttack, passed on the 20th November 1846.

Pursoram Dass, Obhoyram Dass, Nundram Dass, Bulloram Dass, on his death, Mussumaut Suseela Dey, guardian of Sudersun Dass, and others, minor sons of the deceased, (Plaintiffs,) Appellants,

versus

Bawun Canoongoe, (Defendant,) Respondent.

THIS action is brought by plaintiffs against Bawun Canoongoe, their eldest brother, for right and possession in 12 annas, 16 gundahs share in talook Kishenpoor, pergunnah Sooknaye, &c., and for a 12 annas, 16 gundahs share in the rent-free and rent-paying land, situated in mouzah Betrabearampoor and other mouzahs, as mentioned in their petition of plaint, and for their share in the performance of the service of Radhagobind Thakoor, and for houses and property therein, and for a 6 annas, 8 gundahs share in talook

Jugdulpoor, pergunnah Balooobissea, the action being laid at rupees 2,997, 9 annas, 6 pie.

Bawun Canoongoe, defendant, in reply, denies the claim of plaintiffs, and says that the service of the Thakoor is not divisible amongst the brothers; and, according to the customs of the family, the right belongs to him as eldest brother. The talook Kishenpoor, after being sold for arrears of revenue, was purchased by him with his own money, and 8 annas of talook Jugdulpoor, and the rent-free and rent-paying land, for which plaintiffs sue, are his own acquired property, and talook Kishenpoor was sold by him many years ago to Radhasham Narinder Mahapatur, and plaintiffs have no interest or share in the property sued for. Radhasham Narinder Mahapatur, plaintiff, respondent, in appeal No. 7, on the ground, that talook Kishenpoor is his purchased property, has sued to insert his own name in talook Kishenpoor, in lieu of that of Bawun Canoongoe, including Bawun Canoongoe, together with plaintiffs (appellants,) in this appeal as defendants in the suit. No reply was put in by Bawun Canoongoe, and the remaining (defendants,) i. e. appellants, in this appeal, deny that plaintiff, Radhasham Narinder, has any right to talook Kishenpoor, it belongs to themselves and Bawun Canoongoe.

The principal sudder ameen took up both cases together, and dismissed the suit of plaintiffs (appellants,) and decreed the case of Radhasham Narinder Mahapatur. Plaintiffs, being dissatisfied with the decision in his own case, and in that of Radhasham Narinder Mahapatur, preferred special appeal Nos. 6 and 7, from the decisions of the principal sudder ameen. On consideration of the proceedings I am of opinion that the decision of the lower court, under the circumstances of the case, and for several reasons, is incorrect and incomplete, because the conditions under which plaintiffs agreed, on the 10th July 1846, to give up their claim, were not completed. Plaintiffs conditioned, if Radhasham Narinder would himself appear before the principal sudder ameen, and state that he had himself purchased talook Kishenpoor, and held possession thereof and paid rent to the collector, and enjoyed the entire profits himself, and that he had paid the costs of suit in his own case, and Bawun Canoongoe was his taseeldar, and not the zemindar of talook Kishenpoor, that then they would relinquish their suit; and Radhasham Narinder appeared before the principal sudder ameen on the 20th July 1846, and, on being questioned, he stated that he had sued for a mutation of names on talook Kishenpoor, and paid 100 rupees himself for the stamp paper for the petition of plaint, and that he had given orders that the remaining expences should be paid from the profits of the zemindaree, which had accordingly been done; and when he was a minor, his father was in possession of talook Kishenpoor, but by what means he paid the purchase money, and when he obtained possession he does not know; but he is certain that his

father held possession thereof; and after his father's death in 1235, because the profits of the zemindaree were small, he did not retain any omlah himself, but entrusted the zemindaree to Bawun Canoongoe under a zimmanamah, and two or three other documents of the same kind, and in some of the papers abovementioned 300 rupees and in others 350 rupees were mentioned as the profits of the zemindaree talook Kishenpoor, and Bawun Canoongoe was in possession thereof under zimmanamah. He does not know whether plaintiffs were in possession, and enjoyed the profits of the zemindaree; he did not appoint Bawun Canoongoe taseeldar of talook Kishenpoor, or pay him a salary. It appears from the above deposition of Radhasham Narinder Mahapatur, that he did not purchase talook Kishenpoor, with his own money, neither was Bawun Canoongoe taseeldar of the talook, and he (Radhasham Narinder) did not himself enjoy the entire profits of the zemindaree, therefore, his deposition is no no sufficient dulcel for dismissing plaintiffs' claim.

2d. Although the principal sudder ameen, on the strength of the deposition of Radhasham Narinder, dismissed the claim of plaintiffs to talook Kishenpoor, and decreed the suit of Radhasham Narinder, yet it is not at all clear from his fysilla why the claim of plaintiffs to talook Jugdulpoor and the remaining rent-free and rent-paying lands was dismissed. Therefore, in reversal of the decision of the principal sudder ameen, both cases will be returned to that officer for further enquiry, who, after calling upon both parties for proof to the pleas urged by them, and without taking into consideration the deposition of Radhasham Narinder, will pass the necessary orders in both cases. It is therefore ordered, that the decision of the principal sudder ameen in both suits be reversed, and that the original proceedings in both cases be returned to that officer, for further enquiry in the manner above indicated, after which he will pass the necessary orders on the merits of both cases, and also relative to costs of suit. The amount value of the stamp paper in both appeals is to be refunded to appellants.

THE 12TH MAY 1848.

Case No. 7 of 1847.

Appeal from the decision of Tarakaunth Bidyasdgur, Principal Sudder Ameen of Cuttack, passed on the 20th November 1846.

Pursoram Dass, Obhoyram Dass, Nundram Dass, Bulloram Dass, on his death, Mussumat Suseela Dey, guardian of Sudersun Dass, and others, minor sons of the deceased, (Defendants,) Appellants,

versus

Radhasham Narinder Mahapatur, (Plaintiff,) Respondent.

SURT for insertion of the name of plaintiff (respondent) in the entire talook Kishenpoor, in lieu of the name of Bawun Canoongoe, defendant. Action laid at 2,800 rupees, 8 annas, 7 pie.

Since this case and appeal No. 6, have this day been taken up together, and the grounds under which the decision of the principal sudder ameen in appeal No. 6 has been reversed, and the proceedings are to be returned for further enquiry, are sufficient in this case also: it is therefore ordered, that the decision of the principal sudder ameen be reversed, and the original proceedings are to be returned to that officer for further enquiry, in order that, after consideration of the order passed in case No. 6, he will enter on further enquiry in this suit also, after which the necessary orders on the merits of the case and in respect to costs will be passed. The amount value of the stamp in appeal is to be refunded to appellant.

THE 17TH MAY 1848.

Case No. 109 of 1847.

Appeal from the decision of Moonshee Ghureeboolah, Moonsiff of Dhamnugur, passed on the 25th November 1847.

Surasuttee Bhaee and Doolah Bhaee, (Defendants,) Appellants,

versus

Sreemunt Sahoo, (Plaintiff,) Respondent.

THIS action is brought by respondent against the appellants for 50 rupees, principal, and 15 rupees, 8 annas, 9 pie, interest, together 65 rupees, 8 annas, 9 pie, due under a bond executed by them on the 4th Kartick 1252.

Appellants, in their reply, deny borrowing any money from respondent and the execution of the bond.

The moonsiff of Dhamnugur, deeming that the claim of respondent had been satisfactorily proved, passed judgment in his favor. Appellants prefer this appeal. On consideration of the proceedings I am of opinion that respondent has not established his claim, because the execution of the bond and borrowing the money are denied by appellants, and the evidence of the witnesses to the bond is underserving of credit, because none of them attest the bond, and some of them cannot recognize it; neither can they state the date and the year on which it was executed, and they depose that the contents of the bond, the names of the witnesses thereto, and the names of appellants were written by respondent himself, which is a cause of much suspicion. Moreover it appears the money was borrowed and the bond executed in appellants' house, which is contrary to custom. Besides this it is clear that the stamp paper was purchased more than six months before the date of the bond, and the purchaser of the stamp paper has no connection with either of the parties to the suit, he is a stranger. For the above reasons the appeal is decreed, the suit of respondent dismissed, and the decision of the moonsiff reversed. The entire costs of suit in both courts, with interest to date of payment, are payable by respondent.

THE 17TH MAY 1848.

Case No. 2 of 1848.

Appeal from the decision of Gholam Russool, former Sudder Ameen of Cuttack, passed on the 9th September 1830.

Soobadree Bhace, (Defendants,) Appellant,

versus

Aruth and Nath Sahoo, (Plaintiffs,) Respondents.

THIS action is brought by plaintiffs, Aruth and Nath Sahoo, against defendants, Soobadree Bhace, Apa Bhut, and Mitram Bhut, for Sicca rupees 500, principal and interest, due under a bond, said to have been executed by Sata Bhace, Ekutram Bhut, and Mitram Bhut, on the 5th Maugh 1228. Moulvee Gholam Russool, the former sudder ameen of this zillah, passed an *ex parte* decree in plaintiffs' favor. Soobadree Dey, one of the defendants, appellant, presented a petition to this court, on the 27th December 1847, requesting permission to appeal from the above decree, because her husband, Ekutram Bhut, was a minor at the time of the execution of the bond; and permission was accordingly given to her on the 3d January 1848, to appeal within fourteen days. She appealed accordingly on the 15th January. On consideration of the proceedings, I am of opinion, for several reasons, that the pleas urged by appellant are incorrect. 1st. Because, although it appears from the copy of the roocelad produced by appellant, that her husband, Ekutram Bhut, was a minor at the time of the execution of the bond, *i. e.* in 1821, but it is also evident that, in the above case, appellant and Apa Bhut, her father and guardian, defendants, although they acknowledged the receipt of the notice, did not urge any objections at that time before the sudder ameen, and more than sixteen years have elapsed from the date of the decree to the time when appellant presented her petition to this court; if the objections of appellant were true, it was necessary that they should have been urged within twelve years from the date of the decree.

2d.—Appellant states that she herself was a minor when the case was pending, and therefore she could not urge the plea of the minority of her husband, in that case; but her minority at that period does not appear from any papers produced by her. It is quite clear, on the contrary, that appellant was not a minor at the time, because she executed several documents in favor of different persons, and they sued appellant and her father, Apa Bhut, and obtained decrees in their favor. Appellant presented also several petitions in different courts, both in person and by vakeel. It does not appear, moreover, that when the case was pending, appellant's zemindaree was under the Court of Wards.

3d.—Although the collector, when about to pass an order for the sale of appellant's zemindaree, objected in his roobakaree of the 1st April 1836, that it could not be sold, because it was under the Court of Wards, yet the commissioner, in his proceeding of the 7th of the same month, stated that he saw nothing to prevent the sale thereof in the collector's office; and the collector, in his roobakaree of the 12th of the same month, acknowledged that the amount decreed might be paid from the profits of the zemindaree; and notice was accordingly sent to the civil court, and the collector and commissioner, abovementioned, did not in any respect object that the suit of plaintiff was incorrect. On the above grounds, the appeal of appellant is dismissed, and the decision of the sudder ameen confirmed. Costs of appeal are payable by appellant.

ZILLAH DACCA.

PRESENT: HENRY SWETENHAM, ESQ., JUDGE.

THE 20TH MAY 1848.

No. 9 of 1848.

Appeal from the decision of Moulvee Abdoollah, Moonsiff of the City of Dacca.

Musst. Punna Beebe, stepmother and guardian of Noor Khan,
(Plaintiff,) Appellant,

versus

Misree Beebee *alias* Akamutun Khatoon, and her father and mother, named Ahamed Ally Khan and Neeamut Beebee, (Defendants,) Respondents.

Vakeels of Appellant—Petumber Sein and Mr. Christian.

Vakeels of Respondents—Golaum Abas and Ameeruddeen.

SUIT to recover the wife (Misree Beebee) of her stepson, Noor Khan. Action laid at rupees 300.

Plaintiff stated that Misree Beebee *alias* Akamutun Khatoon was Noor Khan's wife; that though aged about 21, he was a perfect fool, and she, as his stepmother and guardian, sued to recover his wife.

Defendants answered Noor Khan had divorced his wife.

The moonsiff called on the law officer of the court for a futwa on two points:

First. Whether the stepmother and guardian could legally institute this suit.

Secondly. Whether under the circumstances of the case the divorce was legal.

The futwa negatived the first point and affirmed the second.

The moonsiff passed judgment as follows: It is apparent from the instrument of divorce, which has been duly proved in evidence, that Noor Khan divorced Misree Beebee; and although Noor Khan may be of weak intellect, according to the futwa the divorce is legal; and from personal discourse Noor Khan appeared to him (the moonsiff) not a fool, though weak in intellect, moreover plaintiff is not legally competent to claim her stepson's wife, though she be his guardian. The suit is therefore dismissed.

Plaintiff, dissatisfied, appeals: she states Noor Khan is a complete imbecile, and the divorce is null.

Respondents answer the divorce is dated the 12th Asar 1251 ; and in Maugh 1252 Noor Khan executed a deed of sale for a share of a house in favor of his wife, in which the divorce is alluded to ; and that he personally registered the said deed the 24th January 1846, which refuted the assertion of appellant that he was a perfect idiot.

There appear no grounds for interfering with the moonsiff's decision, which is hereby affirmed. But, as no notice was served for the attendance of the respondents, they will pay their own costs in appeal.

THE 20TH MAY 1848.

No. 22 of 1847.

Appeal from the decision of Moulvee Abdoolah, Moonsiff of the City of Dacca.

Peer Bukhsh, (Defendant,) Appellant,

● *versus*

Ahasunoolah, (Plaintiff,) Respondent.

Vakeel of Appellant—Rasbeharree Bose.

Respondent served with the usual processes, did not attend either in person or by vakeel.

SUIT for damages for loss of character, laid at rupees 150. Plaintiff stated defendant preferred a false charge of theft against him, and, causing his house to be searched, injured his character. Defendant answers by denying the charge: he admits he preferred a charge of theft against Halal Khooree, whose house was, consequently, searched: plaintiff and Halal Khooree live in the same house.

The moonsiff deputed an ameen to ascertain the circumstances of the plaintiff. The ameen reported he was a man of no respectability. The moonsiff passed judgment as follows.

A man who has lost his property by theft, is disposed to suspect: it is natural that a man should use every effort to recover his stolen property; such is a common feeling with every one: but, at the same time, without due circumspection and precaution to cast suspicion on an honest man is to injure his character, which is highly improper: to decree in this suit the full amount damages, would be ruinous to defendant, therefore he decreed only 50 rupees damages. The defendant, dissatisfied, appeals: he states he did not perfer any complaint against the respondent; his suspicions attached only to Halal Khooree, who lived in the same house as respondent, moreover the moonsiff had disregarded the character of respondent given by the ameen, that he drinks, &c. &c. The appeal was admitted the 25th February 1848. The usual processes issued, but no notice was taken of the case by respondent.

JUDGMENT.

Appellant has passed no imputation against respondent. He suspected Halal Khooree of theft, and the grounds assigned must have appeared sufficient to the magistrate to justify the issue of a search warrant. The house in which Halal Khooree lived was searched at the instance of appellant. Respondent, by dwelling in the same house, may have suffered inconvenience under the legal process; but his character was not assailed, and he had no just grounds for action of damages against appellant. The moonsiff's decision is therefore reversed; respondent will be charged with the costs of both courts.

THE 20TH MAY 1848.

No. 23 of 1847.

Appeal from the decision of Moulvee Abdoullah, Moonsiff of the City of Dacca.

Peer Bukhsh, (Defendant,) Appellant,

versus

Halal Khooree, (Plaintiff,) Respondent.

Vakeel of Appellant—Rasbeharree Bhowe.

The usual processes were served on respondent, but he failed to attend in person or by vakeel.

SUIT for damages for loss of character, laid at rupees 64.

This is the same case as detailed in appeal No. 22. On the same grounds as therein recorded, the moonsiff, under date the 27th January 1847, decreed rupees 32.

Defendant, dissatisfied, appeals. He states he suspected the shoes stolen from his shop were in the respondent's house, and search was made by the police.

JUDGMENT.

The proceeding was legal. The public are protected from unreasonable and oppressive search. The provisions of Section 16, Regulation XX. 1817, restrict the police darogahs from searching the interior of any house or building for stolen property except under the special orders of the magistrate, unless a list of the stolen articles be delivered or taken down in writing at the thanah, with a declaration that a theft has been committed, and that the owner has substantial ground to believe the property is deposited in the house or building proposed for search; and a magistrate never issues a search warrant unless there be strong cause to suspect that stolen goods or effects are concealed within the dwelling or premises of a person; and Clause 4, Section 11, Regulation I. 1811, provides that search warrants for the recovery of stolen property shall not be issued, unless the complainant or informer shall make oath, or subscribe a solemn declaration, that a robbery has been actually committed, and that he has reasonable cause to suspect that the effects stolen are lodged in such

a house or place, or unless it shall appear incidentally from any proceeding holden by the magistrate, that there are grounds to believe that stolen property is there deposited. The search in this instance having been made in due course of law, although no stolen property be found, no action can lie for loss of character. The moonsiff's decision therefore is reversed; costs of both courts payable by respondent.

THE 20TH MAY 1848.

No. 24 of 1847.

Appeal from the decision of Moulvee Abdoollah, Moonsiff of the City of Dacca.

Peer Bukhsh, (Defendant,) Appellant,

versus

Doomun, (Plaintiff,) Respondent.

Vakeel for Appellant—Rasbeharree Bhowe.

Respondent did not appear.

SUIT for damages for loss of character, laid at rupees 150. This is the same case as recited in appeal No. 22. On the same grounds the moonsiff decreed 50 rupees. The defendant, dissatisfied, appeals, and states he did not refer any complaint against the respondent; his suspicion of theft attached only to Halal Khooree, whose house was searched at his instance, and Punnoo's widow lived in the same house. The ameen reported, moreover, that respondent's house was not searched.

JUDGMENT.

Appellant states respondent is the brother of Punnoo; no action can lie from respondent against appellant for loss of character arising out of the search of Halal Khooree's house. The moonsiff's decision is totally unfounded, and is hereby reversed. The respondent will be charged with the costs of both courts.

THE 22D MAY 1848.

No. 316 of 1847.

Appeal from the decision of Moulvee Abdoollah, Moonsiff of the City of Dacca.

Dhunnoo, (Plaintiff,) Appellant,

versus

Durbaree, (Defendant,) Respondent.

Vakeel of Appellant—Ameerooddeen.

SUIT to recover a debt of rupees 15-12.

Plaintiff states he lent his friend, the defendant, rupees 15-12, of which he made a memorandum in his khata buhee, which was signed by defendant, who orally promised to repay the same in a week. The penalty of stamp, 10 annas, had been paid, and he filed his buhee.

Defendant denied having received the loan. Had he taken the money there would have been a bond. He was in partnership with the plaintiff in butcher's business, and they conducted business on the plaintiff's wife's capital: that plaintiff was indebted to him, and wished to compromise for rupees 20: that sum he did not pay, and he was prepared to bring an action against him.

The moonsiff passed judgment as follows. The entry of a loan in a khata buhee is opposed to custom, a bond is usual. Moreover, plaintiff and defendant were at variance previous to this money transaction, which is also apparent, inasmuch as defendant had instituted a suit against the plaintiff, which suit was dismissed; this adds improbability to the alleged loan. Besides, the money was not lent, nor the entry in the khata buhee made, in the house of either party, but in the dwelling of a third party, resident in their mohulla, and the witnesses of the plaintiff are not residents of that place, but are drawn from another mohulla; their testimony therefore is not credited. On these grounds the moonsiff, 30th November 1847, dismissed the suit.

The plaintiff, dissatisfied, appeals. The same pleas are urged as were advanced in the lower court. It appears the alleged money transaction is entered at the end of the appellant's khata buhee, there is no subsequent entry, and none immediately preceding it; a point which weakens credibility in its validity; there is no roznamcha produced, in which, ordinarily, all pecuniary transactions are entered before they are transferred to the ledger. It is a point in law that the best evidence procurable shall be produced to prove a fact, and inferior evidence must be rejected when superior evidence can, without difficulty, be obtained. The witnesses would have carried more weight in their testimony in this case had they lived more contiguously to the spot, where the cause of action is said to have emanated. I see no reason to alter the moonsiff's decision, which is hereby affirmed, without serving notice on the respondent, according to the provisions of Clause 3, Section 16, Regulation V. 1831.

THE 23D MAY 1848.

No. 12 of 1848.

Appcal from the decision of Kaleekinker, Moonsiff of Naraingunge.

Peetamber Deo, (Defendant,) Appellant,

versus

Biddakant Chuckerbuttee, (Plaintiff,) Respondent.

Vakeel of Appellant—Anund Mohun.

To recover a bond debt, with interest, amounting to rupees 192-7.

Plaintiff stated, rupees 524-9-11 were due to him from Peetamber Deo and Jugmohun. He instituted a suit in the sudder ameen's court for the amount. They offered 500 rupees as a compromise, on the 20th Assar 1249 B. S., they paid cash rupees 200, and executed separate bonds for the balance, rupees 300, of 150 rupees each. Peetamber paid on the 5th Sawun, principal rupees 9-4, and interest 12 annas, total rupees 10, which is entered on the back of his bond; the present suit is for balance of principal, rupees 140-12, and interest 51-11, total 192-7.

On the 8th December 1845, the moonsiff decreed the amount, *exparte*.

Peetamber appealed. The case was transferred to the principal sudder ameen, to whom it appeared it was not proved that notice had been duly served on Peetamber. Under the sanction of the judge, the case was consequently remanded for trial *de novo*.

On re-trial defendant filed his answer to the suit, to effect he admitted the original debt and the adjustment, but asserted the full amount of 500 rupees had been paid, and the case was withdrawn from the sudder ameen's file. He denied having executed a bond for rupees 150.

The plaintiff's reply was of the same tenor as his claim.

On the 28th December 1847, the moonsiff passed judgment. He observed the bond was proved by three credible witnesses. Two witnesses were heard for the defendant, one of whom was not in the list of his witnesses filed, and neither of them were trustworthy; they admitted Peetamber and Jugmohun were not on terms, they did not eat together (*hum tam nuheen*), which rendered the statement of their together paying the rupees 500 improbable, and it was deposed by the plaintiff's witnesses, that when they were summoned, Peetamber told them their evidence would not be required as he intended to settle the matter. On these grounds the moonsiff decreed the amount.

Defendant, dissatisfied, appealed, but offered no plea of any weight. He could not produce any receipt in proof of payment of the 500 rupees, nor was the original bond returned. The case which was before the sudder ameen, was called for, from the office records. In it were found two bonds executed by Peetamber Deo and Jugmohun, one for 200 rupees, dated the 15th Bhadoon 1242, the other for 100 rupees, dated the 5th Kartik 1242; no endorsement of payment was made on either, and it appeared the suit was dismissed for neglect the 28th Assar 1249, corresponding with the 11th July 1842. There being no grounds to alter the moonsiff's decision, his decree is affirmed, and the appeal dismissed with costs, without service of notice on respondent, under Clause 3, Section 16, Regulation V. 1831.

THE 23D MAY 1848.

No. 14 of 1848.

Appeal from the decision of Kalceekinker, Moonsiff of Naraingunge.

Juggomohun, (Defendant,) Appellant,

versus

Biddakant Chuckerbutty, (Plaintiff,) Respondent.

Appellant pleaded his own cause in person.

SUIT to recover a bonded debt, amounting, with interest, to rupees 205-14.

The origin of this suit is detailed in appeal case No. 12.

The appellant filed an answer to the suit of first instance, which was appealed. The appeal was transferred to the principal sudder ameen for decision. That officer recommended its being sent back for further investigation by the moonsiff, because the case was the same as Peetamber's, which had been returned, and because only two witnesses, out of a list of seven filed by the defendant, had been examined. Under sanction of the judge, the moonsiff's decision of the 28th January 1846, was reversed, and the case remanded the 30th April 1847.

On the 29th September 1847, Juggomohun petitioned the moonsiff to subpoena his witnesses; and an order was passed on that date, on payment of the usual tulubana they should be subpoenaed. The peon's subsistence allowance was not paid, wherefore on the 28th December 1847, the moonsiff decreed again in favor of the plaintiff.

Defendant, dissatisfied, has again appealed. He has no new plea to offer. He can produce no receipt. The original bonds, he stated, were attached to the sudder ameen's nuthee, in the case struck off for default. They have been duly noticed in appeal case No. 12, and for the reasons stated in that decision, the appeal is dismissed, no grounds appearing to alter the moonsiff's decree, it is affirmed, without notice being served on respondent. Appellant to bear the costs.

THE 27TH MAY 1848.

No. 8 of 1848.

Appeal from the decision of Gopee Mohun, Moonsiff of Sabaur.

Gooroopershad Shah Puramanick and Akool Shah, (Plaintiffs,)

Appellants,

versus

Kishenkant Shah and Soobul Shah, (Defendants,) Respondents.

Vaheels of Appellants—Anund Mohun and Rasbeharree.

SUIT to recover the price of cloth, with interest, amounting to rupees 294-13-3.

The plaintiffs stated that defendants, on the 2d Bysakh 1253, bought from them, in bazar Lukeetgunge, cloth to the value of rupees 274-7, which, after entry in the plaintiffs' khata buhee, they took away, but have not paid for it: they sue for the amount, together with interest, rupees 20-6-3.

Defendants denied having made the purchase, and stated that plaintiff's gola was burnt in Aghun 1252, and they therefore stopped business in Cheyt of that year, and had no dealings in 1253.

Plaintiffs, in reply, stated it was true their gola was burnt, but they set up a small shop on the old site, and carried on business till Assar 1253.

After evidence taken the moonsiff passed the following judgment.

First. Several of the plaintiffs' witnesses stated they had gone to the bazar with intention of buying cloth, but could not come to terms as to the price; but they saw the defendants purchase. These witnesses were strangers, that they should sit so long to observe defendants' purchases to so large amount is incredible.

Secondly. Sumbhoo Shah, one of the plaintiffs' witnesses, deposed, three hours (one puhr) of the day remained when defendants carried away three bundles of cloth, whilst Kantoo, another witness, stated an hour and twenty minutes (4 ghurree) only remained when defendants had done carrying away their purchases. The evidence of these two witnesses was further contradictory, for Sumbhoo said plaintiffs' shop is south of Rubee Podar's shop, Kantoo said it was east.

Thirdly. Sumbhoo stated Bysnub and Sirroomunee are gomastahs in plaintiffs' shop, while Sirroomunee deposed he was sole gomastah.

Fourthly. Sirroomunee deposed Bhugwan sometimes writes the accounts in plaintiffs' shop. Bhugwan declared he never wrote any except the sale of cloth to the defendants.

Fifthly. It is customary for merchants or tradespeople to write their own accounts, or to employ in that duty their gomastahs or mohurrirs, but never strangers. Bhugwan, a stranger, on this occasion has been employed to write the account sale in plaintiffs' pukka khata buhee; moreover, most of the witnesses stated Goorooopershad himself, Radha Govind, and the gomastahs were in the habit of writing the khata buhee. Goorooopershad was present when defendants are alleged to have bought the cloth. Why did he employ a stranger, Bhugwan, who is the gomastah of Kanaee? and how could he leave his own shop on a market day to write the accounts of another shop?

Sixthly. It is to be observed too, in proceedings of the 23d February 1847, in answer to queries from the moonsiff, plaintiffs' vakeel stated the defendants did not deal in cloth, but had a shop for retail of sundries.

Seventhly. It is customary that entries be first made in the rough draft book (kucha buhee) and afterwards transferred to the ledger (pukka buhee.) Plaintiffs cannot produce the kucha buhee, alleging it was burnt with their house. The pukka buhee is generally deposited with it. It is extraordinary one should be burned, the other saved, and that the kucha buhee of that year only was burnt.

Eighthly. Three witnesses of defendants (two in this suit, and one in another) have deposed that, after the period of alleged purchase of this cloth, there was a punchayet to settle accounts (lena dena) between the present litigants. It was then decided rupees 148 by bonded debt were due from plaintiffs to the defendants, still the cloth transaction was never brought forward by the plaintiffs, and, subsequently, great enmity existed between the parties, and they mutually harassed each other with numerous suits in court.

On the grounds above detailed the moonsiff dismissed the suit.

Plaintiffs have appealed, but no pleas are presented to ground any alteration in the moonsiff's decision, which, without serving notice on respondents, is confirmed, and the appeal dismissed with costs. The respondents' property attached under the provisions of Regulation II. 1806, shall be released.

THE 27TH MAY 1848.

No. 44 of 1848.

Appeal from the decision of Imdad Ally, Moonsiff of Mulfutgunge.

Kalee Churn Ghose, (one of the Defendants,) Appellant,

versus

Radhanauth Baroorec, (Plaintiff,) Respondent.

Vakeel of Appellant—none.

SUIT to recover 36 rupees, 8 annas, bond debt, with interest.

Plaintiff sued Kalee Churn Ghose and Gooroo Churn Dey for the above sum. Moonsiff decreed against both, the 21st January 1848.

Kalee Churn Ghose, one of the defendants, presented a derkhaust of appeal in person on the 19th February 1848. More than six weeks have elapsed, and appellant has not filed his pleas, nor appeared again in person, or by vakeel; consequently, under the provisions of Act XXIX. 1841, the appeal is dismissed, and the case struck off for neglect.

ZILLAH DINAGEPORE.

PRESENT: JAMES GRANT, ESQ., JUDGE.

THE 1ST MAY 1848.

No. 5 of 1846.

Appeal from the decision of Pundit Nurhoree Seeromonee, Sudder Ameen, dated the 7th of May 1846.

John Taylor, Esq., (Plaintiff,) Appellant,
versus

Parbutty Debea, (Defendant,) Respondent.

CLAIM, rupees 480-6-3, due on a bond for rupees 3 30, dated the 8th of Kartick 1246. The defendant pleads payment of the bond. She states that the plaintiff held her estate of turf Kusba in farm from 1246 to 1250, at a jumma of rupees 9,777-3-17, the sudder jumma being payable by him, and the balance of 3,000 rupees per annum to be taken by him in liquidation of rupees 10,000 lent to the defendant; that the plaintiff having allowed the estate to fall in arrear, it was advertised for sale, and the balance due paid by her, the defendant; that at the end of the lease, the plaintiff endeavored to retain possession, but the magistrate put her in possession, and the order was confirmed by the sessions court; and that there then was a balance in her favor of rupees 4,941-13-3, for which she was about to sue, when the suit was instituted by the plaintiff. In his reply the plaintiff allows that he took the farm at the jumma of 1244, rupees 9,777-3-16, but with a distinct stipulation that accounts were to be settled according to the actual jumma to be ascertained in 1246; that the estate was accordingly measured and assessed in the presence of the defendant's putwarees, when the jumma turned out to be rupees 5,432-8-16, at which rate the plaintiff collected to the end of his lease with the exception of a period, from Falgoun 1246 to Mang 1247, when the estate was attached in consequence of a dispute between the defendant and the widow of her husband's brothers; that the gross collections having been paid into the collector's office, no money was available for the liquidation of this or other bond; that though the amount of this bond was payable from the Aghun kist, yet the defendant not having given a dakhila for the amount, the plaintiff had not been able to recover it; that the jumma of rupees 9,777-3-16 was fictitious; and that the amount due according to the actual jumma ascertained in 1246 was regularly paid to the collector at the request of the defendant, who

never objected to its amount; and that if she had done so, it is to be presumed that she would not have allowed the plaintiff to retain the farm at the said decreased jumma.

The sudder ameen dismissed the case, on the grounds that the papers filed by the plaintiff in support of the decreased jumma, were not allowed or approved of by the zemindar (defendant;) that from the foudaree and session roobakarees, in which the decreased jumma of rupees 5,432-8-16 was disallowed as unsupported, it appeared that a considerable sum was due by the plaintiff to the defendant according to the jumma of rupees 9,777-3-16, deducting this and other sums advanced by the plaintiff; and that if the gross collections were, as asserted, less than the sudder jumma, there could have been no good reasons for the plaintiff's repeated endeavors to retain possession.

The point for decision in this case is, whether or not rupees 300, with interest, are due by the defendant to the plaintiff on the bond, dated the 12th of Kartick 1246. By the terms of the bond, the amount was to be given credit for in the following month's instalment, of the defendant's estate held in farm by the plaintiff, and the bond thereby redeemed. It appears that after this the plaintiff retained the farm for several years, and paid large sums into the collectorate on account of the defendant, and also advanced money to her on bond and rent receipts. This of itself is, in my opinion, sufficient for the dismissal of this claim, even if the decreased jumma had been proved. In the pottah, on which the plaintiff claims from the defendant, rupees 9,777-3-16 are entered as the gross jumma, according to the papers of 1244, from which the sudder jumma, rupees 6,777-3-16, is to be paid direct to the collectorate by the farmer, and the balance appropriated by him to the liquidation of money lent to the defendant. There is a *proviso*, that the actual undisputed gross jumma ascertained in 1246 is to be held as the annual jumma for the whole period of the five years' lease, and further that, if the 10,000 rupees lent by the plaintiff to the defendant are not paid off by the profits during the five years' lease, the estate is to remain in the plaintiff's possession until the debt is cleared off. On the expiration of this lease both parties petitioned under Act IV. of 1840, and possession was given to the defendant. It then appeared that each party made out a large sum as due by the other, the zemindar claiming rent at the jumma of rupees 9,777-3-16, while the farmer only gave credit for the decreased jumma of rupees 5,432-8-16. The farmer asserted his right to retain possession of the estate, on the terms of the pottah, stating that rupees 19,136-12-11 were due on the 10,000 rupees' bond, and other documents including the bond in this case, which is for only rupees 300; and he ought, in my opinion, to have sued for the whole amount, and not for a small sum on a bond intimately connected with the other demands. I concur with the sudder ameen as to the decreased

jumma not having been allowed by the zemindar. The pottah stipulates that the sudder jumma, rupees 6,777-3-16, is to be paid by the farmer into the collectorate, and the surplus to go in liquidation of the 10,000 rupees; and if it was found in 1246, that the gross jumma was only rupees 5,432-8-16, which is considerably short of the sudder jumma, instead of rupees 9,777-3-16, entered in the pottah, a fresh document was absolutely necessary to relieve the farmer from the payment of the specified rent for the subsequent years during which he retained the farm. The fact that the defendant took possession of her estate when the lease had expired, proves that she was not aware of the gross jumma having decreased from rupees 9,777-3-16 to rupees 5,432-8-16, that is rupees 1,344-11-1 less than her sudder jumma.

For the reasons above given, I dismiss the appeal with costs.

THU 5TH MAY 1848.

No. 9 of 1846.

Appeal from the decision of Pundit Nurhoree Seeromonee, Sudder Ameen, dated the 4th of August 1846.

Jigree Khanum and Juxee Khanum, (Defendants,) Appellants,
versus

Zeinub Bebee *alias* Nunnee Khanum, (Plaintiff.) Respondent.

CLAIM, possession of mouzah Hoseinabad, with mesne profits, under a deed of mortgage and conditional sale, dated the 8th of Poos 1229.

The defendants plead payment in full, from the usufruct of the estate, and further assert that the mortgager, Hydur Hosein, had no right to sale, having made over the estate by a kabeennam to his wife. The defendants are the daughter and granddaughter of the mortgager, Hyder Hossein, who died in 1235. The plaintiff is the widow of the mortgagee's son. The mortgagee obtained possession in 1229. In 1239 his son made application, for foreclosing the mortgage under Regulation XVII. of 1806, to the register of Maldah, and in 1242 petitioned to have his name recorded as proprietor in the collector's books, which was accordingly done; but the defendants appealed against the order of the collector, which was reversed by the commissioner. In 1243 the defendants took possession of the estate, and in 1249 this suit was instituted by the plaintiff, who claims on the deed of sale and the failure of the defendants to redeem the estate after the notice under Regulation XVII. of 1806, was served. The sudder ameen decreed the case, on the grounds that the estate had been mortgaged for nine years,—the notice for foreclosing the mortgage duly served, and the plaintiff's husband subsequently ousted by the

defendants,—not being satisfied with the evidence to the estate having been included in the “kabeennamēh,”—and overruling the defendants’ plea of ignorance as to the notice under Regulation XVII. of 1806, they having stated in their petition to the collector that they had opposed the foreclosure.

The point for decision in this case is, whether or not the deed of sale and the subsequent issue of notice under Regulation XVII. of 1806, establish the plaintiff’s right to the property claimed. The document is a simple deed of sale, but when it was registered the mookhtears of the parties stated that the sale was conditional, the deed being redeemable within nine years, on payment of the money, rupees 1,601, which the mortgager had received and in return given a separate deed to the above effect. This separate deed has not been produced, but the fact of the sale having been conditional is clear. The defendants deny any knowledge of the notice for foreclosing the mortgage, or the person who gave a receipt on it as their naib mookhtear. In opposing the entry in the collectorate of the plaintiff’s husband’s name as proprietor of the estate, they stated that it yielded an annual profit of 500 rupees, from which the mortgagee and his heirs must have obtained much more than the money advanced and the interest on it.

Against this assertion nothing has been urged by the plaintiff, nor has she produced the accounts of the gross receipts from the property mortgaged. It may therefore be presumed that the sum lent, with interest, has been realized from the usufruct, and that the mortgage is therefore cancelled and redeemed under Section 10, Regulation XV. of 1793; and even if it were not so, the plaintiff’s claim ought, in my opinion, to be disallowed, as the application for foreclosing the mortgage under Regulation XVII. of 1806, was made to the register of Maldah, instead of the judge of the zillah. On the above grounds, I reverse the decision of the sudder ameen, and decree the appeal with costs.

THE 10TH MAY 1848.

No. 3 of 1847.

Appeal from the decision of Pundit Nurhoree Sceromonee, Sudder Amecn, dated the 12th December 1846.

Lalla Mokon Lal and others, (Defendants,) Appellants,

versus

Ramdhun Surma and others, (Plaintiffs,) Respondents.

CLAIM, rupees 545-15-11, due on a bond for rupees 300, dated the 2d of Falgoon 1246, given in lieu by Jugroo Lal, the father of the

defendants, to Bulram Surma, the father of the plaintiffs. The defendants deny the authenticity of the bond, and state that Bulram Surma was Jugroo Lal's mookhtear, and had charge of sundry summary suit accounts, for a settlement of which they were about instituting a suit, when the plaintiffs got beforehand with this one, and further, that Jugroo Lal was absent from Maldah on the date of the bond. The plaintiffs, in their reply, deny that any thing was due by Bulram Surma on the summary suit account, and assert that, on the contrary, wages and 100 rupees for an assignment were due to him, for which it is their intention to sue, and further that, after this suit was instituted, the defendants made proposals to settle it amicably.

The sudder ameen decreed the case on the following grounds:—the bond supported by the evidence of eight witnesses, and papers filed by a witness, (formerly the defendants' podar,) in which the amount of this bond is credited in the jote account; the defendants having, after Jugroo Lal's death, agreed to pay; the deposition of the defendants' vakeel to his having presented the bond for payment before this suit was instituted, and its being therefore inferrible that, if it was fictitious, it would have been denounced after it was so produced, or in the answer in this case; Nobkunt podar, re-summoned to attest the mal account filed by the defendants, having said that there were two accounts, one "mal" the other "jote;" and that the amount of the bond was credited in the latter; the copy of the mal account, filed by the podar, tallying with the original filed by the defendants; and the defendants' vakeel, when required to produce the original jote account, having stated that it was not in his clients' house: from all of which it is to be presumed that the jote account was not filed by the defendants, because the amount of this bond was therein credited.

The point for decision in this case is whether the bond is fictitious or genuine. Of three witnesses to the bond, one said he knew nothing about it, a second said that 300 rupees were advanced, and the third, who signed his name on his evidence as Nobkunt, though he gave his evidence as Nobkissore, and was so styled in the summons and the bond, said that he as podar entered a note for 100 rupees, and 200 in cash, *minus* four rupees interest, for Bulram Surma's bond in Jugroo Lal's account; but that he could not speak to the bond itself, or his having been a witness to it, though it was no doubt all right if his name was on it. The plaintiffs after this filed a petition, abusing the defendants' vakeel, and requesting that other witnesses might be summoned, and the podar re-summoned to attest the bond. Among the witnesses subsequently named by them, was the defendants' vakeel. His evidence does not appear to have been regularly taken; but he was asked if he had presented this bond for payment to his client before this suit was instituted, to which he assented. The defendant, Lala Mokon Lal, was also questioned as to the amount of

this bond having been credited in his account; but no questions appear to have been put to him or to his vakeel with a view to elicit the whole truth, or to clear up what looked mysterious. The podar, who had given evidence on the 12th of August, as above stated, appeared again on the 28th of November, and shortly attested the bond. The defendants having subsequently filed their account in which the amount of this bond was not credited, the podar was sent for a third time, and, on the 10th of December, produced copies of two accounts mal shoomar and jote shoomar, and said that the amount of the bond, though not credited in the former (which tallied with the original filed by the defendants,) was so in the latter. No question was then put as to the owner of the jote; but some time after the defendants' vakeel was asked, and said it belonged to Taramonee, when nothing further was asked. The money is said to have been borrowed in the defendants' cutcheree on the 2d Falgoon, and the money (cash) made over to the podar, yet he states that it was not entered in the accounts until the 11th, and consisted of a note for 100 rupees and 200 in cash, with a deduction of four rupees for interest. The note, he says, was taken by the defendants' father for his house expenses, a convenient way of accounting for the number of the note not being given. The entry of four rupees interest may have been intended as a blind by making it appear that his shoomar was not altogether favorable to the plaintiffs. I consider the evidence of this podar with two names totally undeserving of credit both as to his having been a witness to the bond and having entered the amount in his master's account. The greater part of the other witnesses are discarded servants of the defendants' father, and their evidence as well as the deposition of the defendants' vakeel is most suspicious; no mention is made by any of them of wages or assignment money due by the defendants; and it is most improbable that arrangements for payment of the bond should have been made without the slightest allusion to the other scores. The stamp was purchased by the plaintiffs' father, and there is nothing in the case to make it probable that he had the means of lending money to his master; and the want of explanation as to the summary suit account, when wages and loans were claimed by him, is suspicious. A copy of a petition filed by the defendants would make it appear that Jugroo Lal was in the magistrate's court at Dinagepore the day after he is said to have given the bond at Maldah; and from the manner in which this case has been conducted, it appears to me very probable that the suit was instituted with a view to evade a settlement of the summary suit account. For the reasons above given I consider the bond fictitious, and therefore reverse the decision of the sudder ameen, and decree the appeal with costs.

THE 31ST MAY 1848.

No. 5 of 1847.

Appeal from the decision of Pundit Nurhoree Seeromonee, Sudder Ameen, dated the 26th May 1847.

Kanchyram Shah, (Defendant,) Appellant,

versus

Ramchunder Chaterjee, (Plaintiff,) Respondent.

CLAIM, rupees 982-7-3, rent, with interest, due for 1244 to 1247, on 600 beegahs, 10 cottahs, jumma rupees 150-3-4, according to a notice, dated the 13th Bysack 1244. The defendant denies the notification tenure, and states that he held land under a pottah of 1238, according to the terms of which he paid the rent in full. The sudder ameen, overruling the defendant's pleas, decreed the case on the notice, supported by a jumma-wassil-bakce, an ameen's measurement papers, and 17 witnesses; holding that the said notice under Section 5, Regulation IV. of 1794, having been served, rent was payable, whether the land was cultivated or not. The sudder ameen's decision is very lengthy, containing much that is irrelevant, while an award by arbitrators regularly appointed is not even mentioned. Though the point for decision is the value of the notification, that being the main ground of the decree, still an abstract of the circumstances is necessary to account for the arbitrators' award having ended in nothing. The plaintiff was surety for his son as farmer of an estate from 1244 to 1247, after which he took the farm in his own name, his son having died. The defendant held land in the estate on a pottah of 1238, the terms of which were that for land brought into cultivation, he should pay 2 annas per beegah for two years, and 4 annas in after years. The plaintiff claims rent from 1243 to 1247, for 600 beegahs, 10 cottahs, at the rate of 4 annas per beegah, on a notice dated the 13th of Bysack 1244, and addressed to the defendant. In this document it is stated that within specified boundaries, and adjoining the defendant's cultivated land, there are 600 beegahs, 10 cottahs of uncultivated land, which other ryuts wished to take at 4 annas per beegah, when the defendant insisted on having it, and agreed to give a kuboolent, but had not done so; that he is therefore required to give a kaboolent in fifteen days, and that in event of default the notice will be held equivalent to one. The defendant denies the notice tenure, and asserts that he has paid rent for all the land cultivated by him on the terms of his rusudee pottah of 1238. Before this suit was instituted, private arbitrators were appointed, and the land in dispute, as well as that formerly cultivated by the defendant, was measured, cultivated and uncultivated separately. After the institution, an ameen was nominated to ascertain the quantity of land uncultivated, cultivat-

ed and when cultivated. The case was afterwards submitted to arbitration, but without any distinct specification of the disputed points submitted for decision, and without any provision for completing the award in the event of disagreement or other cause. On the plaintiff being dissatisfied with the proceedings of the arbitrators, the sudder ameen directed them to investigate the matters in dispute, or return the papers; and when the award was sent in, both parties objected to it, and one of the arbitrators had omitted to sign it. The arbitrators lumped up the land formerly cultivated by the defendant with that in dispute, deducted one-fourth as uncultivated (on the ground that it was impossible to ascertain when the several portions had been brought into cultivation,) and ruled that the plaintiff was entitled to 4 annas per beegah on the remainder for the whole period *minus* payments by the defendant that might be proved. The case was not properly referred to the arbitrators, and their award was incomplete and irregular, including matters not in dispute while it left the disputed points undecided. A decree conformably to it therefore could not have been passed, but the sudder ameen should have given his reasons for disallowing it, and ought to have been more careful in the first instance as to the points submitted to arbitration. The notification on which the sudder ameen's decision is grounded I consider of no value. It could only be considered a legal tender of a pottah, had it been fixed up in the principal cutcherree as prescribed in Section 5, Regulation IV. of 1794, which it was not; and if the sudder ameen had perused the following Section he would have found that rates are not fixed by such pottahs. In this case it appears to me most improbable that any notification of the kind was served. Had the defendant wished to secure the uncultivated land as purported in the document, it is difficult to account for his not having obtained a pottah for it, and for his not paying any rent for it, while he paid in full on the terms of his russudee pottah for a large quantity of land brought into cultivation. It is hardly credible that the plaintiff under such circumstances should not have made use of his notification, if had actually been served, and was in his opinion valid. It is also to be presumed that had the notification been in existence when private arbitrators were appointed, the point for decision would then have been its validity, and not the quantity of land cultivated; and that there could not in that case have been any good reason for measuring the land formerly cultivated by defendant under his pottah of 1238. I am of opinion that the plaintiff, not being able to come to terms with the defendant, thought it advisable on going into court to double his claim, and at the same time get rid of russudee rates by this notification got up for the occasion. On the above grounds I reverse the decision of the sudder ameen, and decree the appeal with costs.

ZILLAH HOOGHLY.

PRESENT: F. W. RUSSELL, ESQ., JUDGE.

THE 22D MAY 1848.

Case No. 5 of 1847.

Appeal from the decision of Pundit Sreeram Turkolunkar, Sudder Ameen of Hooghly, dated 26th day of June 1847.

Muddoosoodun Biswas, (Plaintiff,) Appellant,

versus

Poranchunder Roy and Chuckenloll Roy, (Defendants,) Respondents.

CLAIM for the refund of certain proceeds of a sale of a putnee talook of the third degree, laid at Company's rupees seven hundred and eighty-nine, annas twelve, gundahs sixteen, (Company's rupees 789-12-16.)

The plaintiff sets forth that, on the tenth day of Maugh in the year 1251 B. S., the plaintiff took from the defendants, durputneedars, the village Ameenpore, situated within the lot Gopeenuggur, at an annual rent of rupees five hundred and seventy-six, as a seputunce, at the same time paying the sum of rupees seven hundred and seventy-five, as the purchase money of the village to the defendants; and that the plaintiff also paid the whole of the rent, with interest, for the first six months of 1252 B. S., to the defendants, durputneedars, and he holds the receipts of the defendants for the same; that in consequence the durputneedars, the defendants, having failed to pay their rent to the sudder putneedar, Birjossoree Debea, for the said six months, she was likewise unable to pay to the zemindars, Gungapersaud Gossein and Gopeekisto Gossein, the rent due by her for the said montlis; hence the lot Gopeenuggur was sold by auction, under the provisions of Regulation VIII. of 1819: thus the plaintiff, having lost his rights in the said village, instituted this suit, for a refund of the sum he had paid to the defendants as the purchase money, including interest.

The defendant, Prawnchunder Roy, in his answer, states that he underlet the village in question to the plaintiff, on the conditions that should there be any neglect on the part of the durputneedar towards the sudder putneedar, Berjossoree Debea, in the payment of rent, then any loss sustained by the putneedar of the third degree, the plaintiff, should not be demanded from them of the second degree, the defendants; that the defendants paid the whole of the rent due for the first six months of the year 1252 B. S., to the sudder

putneedar, and he holds her receipt for the same; that the plaintiff had only paid to them, the defendants, two hundred and fifty rupees, out of two hundred and eighty-eight, the first six months' rent for the year 1252 B. S., and in consequence they, the defendants, instituted a suit for the balance, including interest, that is to say, for the sum of rupees forty-four, anna one, gundahs nine, under Regulation VII. of 1799, which case having been dismissed they preferred a case under No. 154, in the moonsiff's court: hence the plaintiff, being in arrears himself, cannot claim any loss from the defendants.

The sudder ameen pundit Sreeram Turkolunkar dismissed the case, on the grounds that from the documents filed by both parties, neither of them appear to have been in arrears save and with the exception of the sudder putneedar, Berjossoree Debea, and for which arrear the lot was sold; therefore the demand of the plaintiff against the defendant could not be admitted.

The sudder ameen dismissed the claim of the plaintiff on the grounds that neither of the parties appear to have been in arrears save and with the exception of the sudder putneedar. On reference to Section 4, Regulation VIII. of 1819, as the plaintiff is a putneedar of the third degree, he, the plaintiff, could prefer a claim against a durputneedar, or a putneedar of the second degree, but as a putneedar of the third degree, he is not able to prefer a demand against a sudder putneedar. By a precedent filed by the appellant of a similar case, decided by a former judge of this district, (the present Sir Robert Barlow, Baronet,) dated the 10th day of June 1839, the demand of the plaintiff appears just; besides from the exhibits filed by the appellant, it clearly appears that he, the appellant, was not in arrears to the durputneedar. Under these circumstances I decree this appeal, and reverse the decision of the sudder ameen, passed on the 26th day of June 1847, and order that the amount of the demand of the plaintiff, together with the costs of both courts, are to be paid by the respondents, with interest to the date of realization.

THE 22D MAY 1848.

Case No. 9 of 1847.

Appeal from the decision of Pundit Sreeram Turkolunkar, Sudder Ameen of Hooghly, dated the 30th day of June 1847.

Sheikh Ebaudoolla, (Plaintiff,) Appellant,

versus

Rajchunder Shasmol, Sheikh Hajee, Shisteedhur Ghose, Sheikh Ruheennooddeen, Sheikh Tuckee, Sheikh Julaul, and Nursing Ghose, (Defendants,) Respondents.

CLAIM for defamation of character, damages laid at Company's rupees eight hundred, (Company's rupees 800.)

The plaint sets forth that the defendant, Rajchunder Shasmol, and other persons, out of, and from enmity to the plaintiff, preferred a charge of dacoitee, which charge was a false charge, to the darogah, against him, the plaintiff; the defendants alleged at the same time that he, the plaintiff, bore a notorious bad character, &c., and having caused his, that is to say, the apprehension of the plaintiff, maltreated and disgraced him, in consequence of which the plaintiff instituted this suit to obtain in damages reparation for the injury his character had sustained.

The defendants, Rajchunder Shasmol and Sheikh Hajee, in their answer, declare the plaintiff to be a common labourer, and the females of his family sell thread at the haut, or fair, that they, the defendants, being the mondols of the village, reported all the bad characters to the thannah, that by the connivance of the darogah, the fact of the plaintiff being a bad character was not proved, &c.

The sudder ameen pundit Sreeram Turkolunkar dismissed the case on the grounds set forth in his decision.

I do not see any just grounds on which to touch the decision of the sudder ameen pundit Sreeram Turkolunkar, dated the 30th day of June 1847, therefore I dismiss this appeal.

Costs of this court to be paid by each party respectively, because the respondents, Rajchunder Shasmol and Sheikh Hajee, appeared unsummoned.

THE 22D MAY 1848.

Case No. 95 of 1848.

Appcal from the decision of Baboo Denonauth Bose, the Moonsiff of Dwarhutta, dated the 24th day of February 1848.

Nobcen Baugdee and Rammissur Baugdee, (Defendants,) Appellants,

versus

Ramjoy Patur, (Plaintiff,) Respondent.

CLAIM for the recovery of a sum of money advanced on a bond, including interest, laid at rupees thirty, annas two, gundahs five, (Company's rupees 30-2-5.)

The appellants, on the 30th day of March 1848, preferred their petition of appeal, stating that they would subsequently file their "wujoohaut," or grounds for appeal. Six weeks have elapsed and the appellants have not proceeded with their case. I therefore dismiss this appeal, with costs, on default, under the provisions of Act XXIX. of 1841.

THE 22D MAY 1848.

Case No. 108 of 1848.

Appeal from the decision of Baboo Denonath Bose, the Moonsiff of Dwarhutta, dated the 28th of February 1848.

Bhyrob Samunth, (Defendant,) Appellant,

versus

Muddunmohun Banerjee, (Plaintiff,) Respondent.

CLAIM for the recovery of a sum of money, lent on bond, including interest, laid at Company's rupees thirty-two, annas eleven, gundahs three, Company's rupees 32-11-3.

The papers in this case shew, that the appellant presented his petition of appeal, on the 5th day of April 1848, stating that he would subsequently file his " wujoohant," or grounds of appeal. Six weeks have elapsed, and the appellant has not taken any further steps to proceed with his case, therefore I dismiss this appeal with costs on default, under the provisions of Act XXIX. of 1841.

THE 22D MAY 1848.

Case No. 163 of 1847 A. D.

Appeal from the decision of Moulvee Yahsanul Ghunnee, the Moonsiff of Jahanabad, dated the 6th day of July 1847 A. D.,

Hullodhur Roy and Dhoomachurn Roy, (Defendants,) Appellants,

versus

Dhujnarayn Koowur, (Plaintiff,) Respondent.

SUIT for the arrears of rent, laid at Company's rupees twenty-two, annas twelve, gundahs six, including interest.

The papers of the case shew that within the talook lot Doherkoonddoo, belonging to the plaintiff, in the village Hameer Ballee, the ancestor of the defendants, by name Ramkanto Roy, held a jumma of seven rupees, two annas, and seven gundahs, with a mamoolce batta, or established batta, of two annas and eighteen gundahs; that on the settlement of accounts from the year 1241 B. S. to the year 1251 B. S., after deducting the sums previously paid, a balance of rupees forty-five, annas twelve, gundahs twelve, appeared due by the defendants, who failing to defray the same, the plaintiff instituted this suit against them, including interest.

The defendants, Hullodhur Roy and Dhoomachurn Roy, in their answer, state that within the said village they hold a jumma of Sicca rupees six, eleven annas, and three gundahs, under a perpetual lease, which they have annually paid, and they hold receipts for the same, and that they have not any arrears to pay, &c.

The moonsiff decreed the case, exclusive of the established batta, to the extent of rupees twenty-two, annas twelve, gundahs six, that

is to say, principal money ten rupees, four annas, and thirteen gundahs, after deducting the sums previously paid as stated in the plaint, and a like sum, that is to say, ten rupees, four annas and thirteen gundahs, on account of interest, and two rupees, three annas, on account of interest, while the case was pending before him, the said moonsiff.

The respondent claims the sum of rupees forty-five, annas twelve, gundahs twelve, (Company's rupees 45-12-12,) for the arrears of rent ; and the moonsiff decreed the case to the extent of Company's rupees twenty-two, annas twelve, gundahs six, (Company's rupees 22-12-6,) exclusive of the mamoolce, or accustomed batta ; but the period of eight years has not expired as regards all the years for which the said rent is claimed, nor does it appear from the decision of the moonsiff by what calculation he, the said moonsiff, has decided this case to the extent of Company's rupees twenty-two, annas twelve, gundahs six, (Company's rupees 22-12-6,) nor has the moonsiff, as is usual in such a case, filed a separate document, exhibiting the particulars of the account, with the nuthee, which he certainly ought to have done ; hence the decision of the moonsiff is incomplete : therefore I decree this appeal, and reverse the decision passed by the moonsiff on the 6th day of July 1847 ; and I direct that this case be remanded to the moonsiff for re-trial, with instructions to restore the case to its original number on his file and, having supplied the omissions pointed out in this decree, to re-try the case.

Costs to be paid by each party respectively for the present, and ultimately by the losing party.

The value of the stamp upon the petition of appeal to be refunded to the appellants.

THE 22D MAY 1848.

Case No. 167 of 1847.

Appeal from the decision of Moulvee Syud Israr Ali, the Moonsiff of Keerpoy, dated the 15th day of July 1847.

Ramanund Mundle, (Plaintiff,) Appellant,

versus

Muharaj Dheraj Rajah Mahataubchunder Bahadoor, Bippradoss Bose, Naib, and Soodhakysto Mujoomdar, Gomashtah, (Defendants,) Respondents.

CLAIM to obtain a dakhilla, or receipt, laid at rupees forty-five, (Company's rupees 45.)

The plaint sets forth that the plaintiff holds sixty-seven beegahs and sixteen cottahs of every description of land, in the village called Allovee, for which he pays an annual rent of rupees one hundred

and sixty-eight, annas eight, gundahs eighteen; that of the rent for the year 1253 B. S. up to the month of Aghun, he paid the sum of rupees ninety-one, and he received a receipt for that sum; that he, the plaintiff, paid the balance, that is to say, forty-five rupees, on the 25th day of Poose of the same year, that is to say, the year 1253 B. S.; and the gomashtah having failed to grant him a receipt for that sum, that is to say, the sum of rupees forty-five, he, the plaintiff, instituted this suit.

The defendant, Soodhakysto Mujoomdar, gomashtah, in his answer, states that the plaintiff holds one hundred and thirty-four beegahs and fourteen and a quarter cottahs of every description of land, at an annual rent of rupees three hundred and ninety-five, annas three, gundahs fourteen; that of the rent due for the year 1253 B. S., up to the 27th day of Poose, the plaintiff paid rupees ninety-one, and having received a dakhilla, or receipt, for the said sum, acknowledged the receipt of it, as customary, in the receipt book; that, on the settlement of the account, a balance of rupees three hundred and fifty-five, three annas and fourteen gundahs was found due against the plaintiff, who affixed his signature to it, but with a view not to pay the said rent to the defendant, the plaintiff instituted this suit.

The moonsiff decreed the case, on the grounds set forth in his decision, and ordered that the forty-five (45) rupees paid by the plaintiff be deducted from the rent due to the defendant, and twice as much as that sum, that is to say, twice the sum of forty-five rupees, or ninety rupees, with all costs of suit, be realized from the defendant, Soodakysto Mujoomdar, gomashtah, and paid to the plaintiff.

The plaintiff, being dissatisfied with the decision of the moonsiff, preferred this appeal, urging that as it had been clearly proved that the gomashtah had received the money and had failed to give a receipt for the same, that there is not any Regulation, which directs that the zemindar is to be exempted from the demand, but on the contrary, Section 63, Regulation VIII. of 1793, distinctly and expressly declares that the zemindars should not be exempted from such like demands; hence the moonsiff having decreed the case against the gomashtah alone, the decision is in contravention of the Regulation quoted above.

I do not see any sound reason on which to disturb the decision of the moonsiff of Keerpoy, passed on the 15th day of July 1847; therefore I dismiss this appeal with costs.

THE 22D MAY 1848.

Case No. 191 of 1847.

*Appeal from the decision of Moulvee Syud Israr Ali, Moonsiff of
Keerpoy, dated the 27th day of July 1847.*

Bharutchunder Munnah, (Defendant,) Appellant,

versus

Ramdhone Chuckerbuttee, (Plaintiff,) Respondent.

Bungseedhur Roy, Dhunnunjoy Mundle, and Govindo Paul,
(Defendants,) Respondents.

CLAIM for the reversal of an order passed under Regulation V. of 1812, and to obtain possession of certain rent-paying (maul) land, laid at Company's rupees sixty-one, annas eight, (Co's Rs. 61-8.)

The papers of this case shew that at the time the boundaries of the pergunnahs Chunderconah, &c. were determined, Bharutchunder Munnah, the defendant, procured the boundaries of forty beegahs of land to be included in puttee Moheshgole, within the talook of the plaintiff called Shamgunge, as land belonging to him, and as situated within his talook, lot Heeradhpore, village Ballah; the plaintiff instituted a suit under No. 60, in the court of the deputy collector, when the land in dispute was proved to belong to the plaintiff, and to be situated within his, the plaintiff's, talook, notwithstanding which Bharutchunder Mannah, the defendant, not only plundered some of the produce, but also caused the attachment and sale of the produce of the thirteen beegahs and sixteen cottahs of the said land, which land was cultivated by the ryots Bungseedhur Roy and Dhunnunjoy Mundle, under the provisions of Regulation V. of 1812, alleging the land to be his property, and to be situated within his talook Ballah, and to be cultivated by his ryot, Govindo Paul, in consequence of which the plaintiff has instituted this suit; that the unjust sale effected under the provisions of Regulation V. of 1812, be reversed, and that he be placed in possession of the thirteen beegahs and sixteen cottahs of land, the value of the profit of which is rupees sixty-one, annas eight, being the sum at which this suit is laid.

The defendant, Bharutchunder Mannah, in his answer, declares that his ryot, Govindo Paul, holds nineteen beegahs of land within his talook Ballah; that the ryot failing to pay the rent due for the year 1252 B. S. up to the month of Aughun, he, the defendant, had legally procured the attachment and sale of the produce of the land cultivated by the said ryot, for the sum of rupees fifteen, annas fourteen, gundahs twelve, (Co.'s Rs. 15-14-12,) and thereby realized

five rupees; and the plaintiff, with a view to include the land in question within his talook, instituted this suit.

The moonsiff decreed the case on the grounds set forth in his decision.

The plaintiff, Ramdhone Chuckerbuttee, instituted this suit, alleging that the defendant had dispossessed him, under the provisions of Regulation V. of 1812, and praying that the order passed under that Regulation be reversed; but as the plaintiff has not estimated the value of the suit in accordance with the directions stated in Construction No. 862, I decree this appeal, and reverse the decision of the moonsiff, passed on the 27th day of July 1847, and I nonsuit the original suit.

All costs of the suit to be paid by the respondent, Ramdhone Chuckerbuttee.

THE 22D MAY 1848.

Case No. 192 of 1847.

Appeal from the decision of Moulvee Syul Israr Ali, the Moonsiff of Kعرpoy, dated the 27th day of July 1847.

Bharutchunder Mannah, (Defendant,) Appellant,

versus

Dhunnunjoy Mundle, (Plaintiff,) Respondent.

Ramdhone Chuckerbuttee and Govindo Paul, (Defendants,) Respondents.

SUIT for the possession of certain mau, or rent-paying land, including damages, laid at Company's rupees thirty, (Company's rupees 30.)

The plaint sets forth that the plaintiff holds eleven beegahs and eighteen cottahs of every description of land in the village Shamgunge, for which he pays an annual rent of rupees seventeen, annas fourteen, gundafis eight, (rupees 17-14-8,) that when the defendant, Ramdhone Chuckerbuttee, purchased the talook, the plaintiff paid to him the rent regularly, and he holds the receipts of the payment of the said rent; that the defendant, Bharutchunder Mannah, fraudulently alleging that his ryot, Govindo Paul, holds nineteen beegahs of land in the village Ballah, within lot Hera-dharpore, at an annual rent of rupees twenty-six, (rupees 26,) and that he, Govindo Paul, had failed to pay his rent due for the year 1252 B. S., up to the month of Aughun, that is to say, the rent

amounted to rupees sixteen, annas fourteen, gundahs twelve, (Company's rupees 16-14-12,) forcibly seized and plundered some of the produce on the plaintiff's ten beegahs one cottah portion of land called Puttee Moheshgole, under the provisions of Regulation XX. of 1817, and caused the sale of it, the said produce, under the provisions of Regulation V. of 1812, in consequence of which the plaintiff instituted this suit, for possession of the said land in dispute, and sixty-two rupees, three annas, and five gundahs, that is to say, for fifty-two rupees, three annas and five gundahs, on account of damages, and ten rupees, the value of the land in question.

The defendant, Bharutchunder Mannah, in his answer, does not acknowledge the claim of the plaintiff, but declares that his ryot, Govindo Paul, does hold nineteen beegahs of land in his talook Ballah, which is situated within lot Heeradhurpore; that the ryot, Govindo Paul, having failed to pay the rent due for the year 1252 B. S., up to the month of Aughun, he, the defendant, had legally procured the attachment and sale of the produce of the land, and realized the sum of five rupees, (rupees 5); that the defendant, Ramdhone Chuckerbuttee, with a view to include the land in question, within his talook, called Shamgunge, instigated the plaintiff to institute this suit against him, Bharutchunder Mannah.

The moonsiff decreed the case on the grounds set forth in his decision, and ordered that the plaintiff be put in possession of the rights claimed by him, and that the sum of rupees twenty, (rupees 20,) on account of damages, be realized from the defendant, Bharutchunder Mannah, and his gomashtah, Roopnarain Ghose, and that the said sum of rupees twenty (rupees 20) be paid to the plaintiff.

The appellant, being dissatisfied with the moonsiff's decision, preferred this appeal, urging that, owing to his documents having been filed in a case under Act IV. of 1840, in the sessions court, he was unable to file them in this case; and that the fact of the land in dispute being situated within his talook, would be proved by a local investigation.

In reference to the statement of the appellant, I decree this appeal, and reverse the decision of the moonsiff, passed on the 27th day of July 1847; and I direct that this case be remanded to the moonsiff for re-trial, with instructions to restore the case to its original number on his file, and, having caused a local investigation to be made on the points noticed in this decree, to re-try the case.

Costs to be paid for the present by each party respectively, and ultimately by the losing party.

The value of the stamp upon the petition of appeal to be refunded to the appellant.

THE 22D MAY 1848.

Case No. 264 of 1847.

Appeal from the decision of Moulvee Muhummud Allum, the Moonsiff of Oolooberria, dated the 27th day of September 1847.

Seebchunder Chuckerbuttee, (Defendant,) Appellant,

versus

Issurchunder Koondoo, (Plaintiff,) Respondent.

CLAIM for the recovery of a sum of money advanced on a bond, including interest, laid at Company's rupees sixty-five, annas eight, gundahs fifteen, (Company's rupees 65-8-15.)

The papers in this case shew that the defendant borrowed from the plaintiff the sum of rupees fifty, on a bond, dated the 10th day of Aughun 1250 B. S., on the security of the late Ramdhone Banerjee, the interest accruing thereon up to the 24th day of Phalagoon 1253 B. S., amounted to rupees nineteen, and annas twelve, making a total sum of rupees sixty-nine, annas twelve, in part payment of which sum the defendant repaid rupees seven and annas eight, on account of interest; and the defendant having failed to refund the balance, the plaintiff filed this suit against the defendant and the heirs of his surety, that is to say, against Issurchunder Banerjee and Madhubchunder Banerjee, and the brother of the defendant, by name Nobbokisto Banerjee.

The defendant, Seebchunder Chuckerbuttee, in his answer, denies altogether the debt, and declares that his cousin, by name Oboychurn Chuckerbuttee, from pique and animosity, instigated the plaintiff to institute this suit against him, on the strength of a fabricated bond.

The other defendants did not file any answer.

The moonsiff decreed the case to the extent of rupees sixty-five, annas eight, and eighteen gundahs, which amount includes the interest accruing during the time the case was pending in his court.

The two witnesses adduced by the plaintiff to prove the execution of the bond in question, were very illiterate, so much so as to be unable either to read or write, and the authenticity of the bond has not been proved by their evidence; moreover the bond in question bears a very suspicious appearance, for it is evidently written with fresh ink on old paper: hence I decree this appeal, and reverse the decision passed by the moonsiff of Oolooberria, on the 27th day of September 1847.

Costs of both courts to be paid by the respondent.

THE 23D MAY 1848.

Case No. 26 of 1847.

Appeal from the decision of James Reily, Esq., Principal Sudder Ameen of Hooghly, dated the 15th day of September 1847.

Mudoosoodun Chuckerbuttee and Pertaubchunder Chuckerbuttee,
(Defendants,) Appellants,

versus

Annundloll Roy, Purmanund Roy, and Horishanund Roy, (Plaintiffs,) Respondents.

CLAIM for the possession of three cottahs of lakhiraj, or rent-free land, with the houses erected for the purpose of the worship of idols, and a temple called Naut mondeer, and dole munchub, also for damages by the loss of the ornaments, &c., laid at Company's rupees one thousand, two hundred and thirty-seven, annas ten, (Company's rupees 1,237-10.)

The plaint sets forth that the plaintiffs possessed three cottahs of ancestral lakhiraj, or rent-free land, on which they first erected a thatched and subsequently a brick house, a temple, or pagoda, called Naut mondeer, and a dole munchub, for the performance of the Gunneish Jonnonee Poojah; that having performed the prethista, or the ceremony of consecrating the temple, they continued for a long time to conduct the worship of the idol; that the defendants were their pooroheet, or priests, but the defendants having violated the sanctity of their office, the plaintiffs dismissed them; that in the month of Poose 1250 B. S., the defendants having prevented the worship, and having seized on the articles and appropriated the same to their own use, that is to say, to the use of the defendants, the plaintiffs instituted this suit as laid above.

The defendants, in their answer, state that the land in dispute is their own property, that is to say, that the lakhiraj, or rent-free land in dispute is the property of the defendants; that the buildings thereon were erected by contribution of the baro yaree poojah; that the plaintiffs only superintended the work, and that the poojah was performed by the baro yaree, that the land on which the dole munchub was built is held on a lease taken by the plaintiff, Purmanund Roy, from the defendants; that owing to the contribution money having been deposited with the plaintiffs, they squabbled with the defendants, and the plaintiffs then dismissed the defendants from the office of pooroheet; and that the plaintiffs have instituted this suit from pique and animosity, &c.

The late principal sudder ameen, Baboo Roy Radhagovind Shome, dismissed the case on the 21st day of May 1845. On an appeal by the plaintiffs, it was remanded for re-trial by the judge to James Reily, Esq., the present principal sudder ameen, on the 21st day of November 1846, on the grounds that the ameen who had been deputed to make the local investigation and enquiry

had not been duly sworn according to the provisions of Section 17, Regulation IV. of 1793.

James Reily, Esq., the principal sudder ameen, having supplied the omission noticed in the decree of the judge, dated the 21st day of November 1846, decreed the case on the grounds set forth in his decision.

The principal sudder ameen, Mr. James Reily, on the 26th day of July 1847, summoned the respondent, Permanund Roy, to attend. It appears that he, the respondent, did not obey the orders for a period beyond six weeks, nor has he, the respondent, assigned any reason for his not appearing. The copy of a deposition filed by the respondents as an exhibit, on the 7th day of September 1847, was not filed within the period of six weeks, if the time be calculated from the 26th day of July 1847. Under these circumstances the principal sudder ameen, James Reily, Esq., ought to have carried into effect the provisions of Act XXIX. of 1841, on account of the default on the part of the respondents; hence I decree this appeal, and reverse the decision of James Reily, Esq., the principal sudder ameen, and direct that the case be remanded to the said principal sudder ameen for re-trial, with instructions to restore the case to its original number on his file, and then to dispose of it in accordance to the provisions of Act XXIX. of 1841.

Costs to be paid by each party respectively for the present, and ultimately by the losing party.

The value of the stamp on the petition of appeal to be refunded to the appellants.

THE 27TH MAY 1848.

No. 1 of 1847.

Appeal from the decision of Alexander Reid, Esq., the Collector of Hooghly, dated the 20th day of April 1847.

Joykissen Mookerjee and Rajkissen Mookerjee, (Plaintiffs,)

Appellants,

versus

Bhoyrobchunder Bhuttacharje, Gungadhur Bhuttacharje, Hurchunder Bhuttacharje, Ramchunder Bhuttacharje, Sreedhur Bhuttacharje, Mohesh Bhuttacharje, Paran Bhuttacharje, Essan Bhuttacharje, Nobeen Bhuttacharje, Premchand Bhuttacharje, Bhowanee Bhuttacharje, Lukhynarayn Mookerjee, Neemye Mookerjee, Gorachand Mookerjee, and Prannath Chowdry, (Defendants,) Respondents.

CLAIM to establish the fact that certain land in dispute is maul, or rent-paying, laid at Company's rupees three thousand, six hundred, and eighty-one, annas three, gundahs seventeen, cowries two, (Company's rupees 3,681-3-17-2.)

Moonshee Gholam Ali and Shumbhoochunder Mitter, the wukeels for the appellants in this case, filed a razeenamah in this case, on the 25th May 1848, stating that their clients had filed a suit under No. 564, in the court of the collector, laid at rupees four thousand, three hundred and twenty-five, eight annas, and five gundahs, Company's rupees 4,325-8-5, against the respondents to establish the fact, that the seventy-five biggahs, and twelve cottahs, fifteen chittacks, and fifteen gundahs of land, situated in the villages, Bhowanepore, &c., within lot Rheedoyrampore, was maul, or rent-paying land: the collector on the 20th day of April 1847, decreed the case, declaring the land in dispute to consist of two parcels or portions, one portion of which to consist of fifty-one biggahs, and eighteen cottahs of lakhiraj, or rent-free land, and the remaining portion of the aforesaid seventy-five biggahs to consist of maul, or rent-paying land: that the appellants, being dissatisfied with the decision of the collector, as far as relates to the fifty-one biggahs, and eighteen cottahs of lakhiraj rent-free land, preferred this appeal; but now finding on enquiry that the fifty-one biggahs and eighteen cottahs of land are lakhiraj, or rent-free, and are the property of the defendants, they, the appellants, have withdrawn their claim to the said land, and filed a razeenamah, and as the case has been amicably settled amongst themselves, they pray that each party pay his own costs, and that the value of the stamp upon the petition of appeal may be refunded to the appellants.

The respondents, Bhoyrobchunder Bhuttacharje, Gungadhur Bhuttacharje, Hurchunder Bhuttacharje, Ramchunder Bhuttacharje, and Sreedhur Bhuttacharje, filed a safeenamah to the same purport, as the razeenamah. Under these circumstances I dismiss the appeal in accordance to the said razeenamah and safeenamah above noticed in this decree.

Costs to be paid by each party respectively, and value of the stamp on the petition of appeal, together with the amount deposited for costs of appeal, are to be refunded to the appellants.

THE 27TH MAY 1848.

Case No. 2 of 1847.

Appeal from the decision of Alexander Reid, Esq., Collector of Hooghly, dated the 20th day of April 1847.

Gungadhur Bhuttacharje, Bhoyrobchunder Bhuttacharje, Ramchunder Bhuttacharje, Sreedhur Bhuttacharje, Hurchunder Bhuttacharje, and Gorachand Mookerjeea, (Defendants,) Appellants,

versus

Joykissen Mookerjeea and Rajkissen Mookerjeea, (Plaintiffs,) and Prannath Chowdry, (Defendant,) Respondents.

CLAIM to establish the fact, that certain disputed land is lakhiraj, or rent-free land; laid at Company's rupees seven hundred and

eighty-three, annas three, gundahs twelve, (Company's rupees 783-3-12.)

Seebnauth Roy, the vakeel of the appellants, filed a razeenamah in this case, on the 25th day of May 1848, stating that the respondents filed a suit No. 564, in the court of the collector, for the sum of rupees four thousand, three hundred, and twenty-five, annas eight, gundahs five, against his client, to establish the fact that seventy-five beegahs, twelve cottahs, fifteen chittacks, and fifteen gundahs of land, situated in the villages Bhowaneepore, &c., within lot Rheedoyrampore, was maul, or rent-paying land; the collector on the 20th day of April 1847 decreed the case, declaring the land in dispute to consist of two portions, that is to say, that one portion consisted of fifty-one beegahs and eighteen cottahs of lakhiraj, rent-free land, and the other portion to consist of twenty-four beegahs and nineteen cottahs of maul or rent-paying land; that his client, being dissatisfied with the decision of the collector, as far as relates to the twenty-four beegahs and nineteen cottahs being rent-paying land, preferred this appeal: however, he, the client, is now imperfectly satisfied on a strict enquiry that the said portion of land is maul, or rent-paying land; they, the appellants, therefore withdraw their claim to the land in question, and file a razeenamah, and since the case has been amicably settled amongst themselves, they pray that each party pay his own costs, and that the value of the stamp upon the petition of appeal be refunded to the appellants.

The respondents, Joykissen Mookerjeea and Rajkissen Mookerjeea, filed a safeenamah to the same purport as the razeenamah. Under these circumstances I dismiss this appeal, in accordance to the said razeenamah and safeenamah, noticed in this decree.

Costs to be paid by each party respectively, and the value of the stamp on the petition of appeal, and the amount deposited for the costs of the appeal, to be refunded to the appellants.

THE 27TH MAY 1848.

Case No. 4 of 1847.

*Appeal from the decision of Alexander Reid, Esq., Collector of Hooghly,
dated 30th day of May 1847.*

Meer Daud Ali, (Plaintiff,) Appellant,

versus

Radhabinode Haldar, Fukeerdoss Haldar, Ramkishore Haldar, Shammohun Haldar, Byekuntonauth Haldar, Sreenauth Haldar, Rajoo Berah, and Fukeer Ghorooee, (Defendants,) Respondents.

CLAIM to establish the fact, that certain land in dispute is maul, or rent-paying, laid at rupees five hundred, and forty five, annas five, gundahs six, (Co.'s rupees 545-5-6.)

The papers in this case shew that within the zumeendaree belonging to the appellant, called turf Jankra, there is a village named Jalloor, attached to which is a puttee called Chalda Tolah, of which five beegahs and one cottah is alluvial rent-paying land, gained by the dereliction of the river Seelabuttee, which land, so derelicted by the river, the respondents hold in their possession as rent-free land, in consequence of which the plaintiff instituted this suit.

The defendants, with the exception of Rajoo Berah and Fukeer . Ghurooe, in their answer, state that they hold thirty-three beegahs and eighteen cottahs of lakhiraj, or rent-free land, which land is surrounded by a deep ditch, and within which boundary the land in dispute is situated.

The former collector, on the 3rd day of April 1844, decreed this case, and on appeal, by the defendants, the case was remanded for re-trial on the 24th day of November 1846, to the collector with directions to cause a local investigation to be instituted, and then to re-hear the case.

In accordance to the above order, Mr. Collector Reid, having caused a local investigation to be made, dismissed the case, and the appellants, being dissatisfied with the decision of the collector, preferred this appeal.

It appears that the ameen deputed by the collector to make the local enquiries, was not legally sworn in accordance to Section 17, Regulation IV. of 1793, and the hullufnamah, or affirmation, which he, the ameen, made, was not drawn up according to the regular or customary form; hence I consider the decision of the collector incomplete. I therefore decree this appeal, and reverse the decision passed by the collector, on the 30th day of May 1847, and direct that the case be remanded to the collector for re-trial, with directions to restore the case to its original number on his file, and, having caused the ameen to be legally sworn, and having supplied the omission noticed in this decree, to re-hear the case.

Costs to be paid for the present by each party respectively, and ultimately by the losing party.

The value of the stamp on the petition of appeal to be refunded to the appellant, together with the amount deposited for costs of appeal by the said appellant.

THE 27TH MAY 1848.

Case No. 6 of 1847.

Appeal from the decision of Alexander Reid, Esq., Collector of Hooghly, dated the 31st day of May, 1847.

Ramchand Mookerjee, (Defendant,) Appellant,

versus

Joykissen Mookerjee and Rajkissen Mookerjee, guardians of Beejoykissen Mookerjee, a minor, zumeendar of an eight annas share and putneedar of the remaining eight annas share of lot Paurarah, (Plaintiffs,) Respondents.

CLAIM to obtain a reversal of the decision of the collector, in regard to certain costs, laid at Company's rupees one hundred and twenty-seven, annas eleven, (Company's rupees 127-11 annas.)

The plaint sets forth that the defendant built a house on a parcel of ground, consisting of one biggah and six cottahs of maul, or rent-paying land, belonging to the plaintiffs, in Paurarah, the annual rent of which is rupees seven, one anna, and ten gundahs: the defendant having declined to pay the said rent on the plea that the land in dispute was lakhiraj, or rent-free, the plaintiffs instituted this suit.

The defendant, in his answer, states that he does not possess any land either maul, rent-paying, or lakhiraj (rent-free,) within the talook Paurarah, the property of the plaintiffs, but that he, the defendant, does hold one biggah and thirteen cottahs of maul, or rent-paying land, in the village, named Jote Goverdhun, within the lot Shoobhurn Arah, the talook of or belonging to Nyteanund Koond Chowdree, &c., the annual rent of which is rupees three, annas fifteen, that the plaintiffs with a view to include the said one biggah and thirteen cottahs, within their talook Paurarah, have falsely stated the land to be one biggah, six cottahs, and have instituted this suit from enmity.

The claim preferred by Nyteanund Koond supports the answer given by Ramchand Mookerjee.

Mr. Collector Reid struck the case off the file, on the ground that both parties claim the land as maul, or rent paying, but dispute the locality of it, and that the case can only be decided in a civil court, and not by the collectors, moreover the defendant not having filed any documents, ordered all the costs to be paid by him, the defendant.

The appellant, being dissatisfied with the latter part of the collector's order, preferred this appeal.

The grounds on which the collector struck this case off his file, appear from the papers in the nuthee to be perfectly sound; but the order, directing the appellant to pay all the costs, seems to me to be incorrect, because I cannot find any good reason in the decision of the collector on which to saddle the appellant with all costs, on the contrary, it is clearly evident that the plaintiffs instituted this suit under the provisions of Section 30, Regulation II. of 1819, needlessly and vexatiously: hence I consider the collector's decision requires amendment, and therefore decree the appeal, and amend the decision of the collector as follows—that the portion of the order passed by the collector, directing the case to be struck off his file, be confirmed; and that part ordering all costs to be paid by the defendant to be reversed, and the costs aforesaid, as well as the costs of this court, are to be paid by the respondents.

ZILLAH JESSORE.

PRESENT: H. F. JAMES, ESQ., JUDGE.

THE 3D MAY 1848.

Case No. 26 of 1847.

Regular Appeal from the decision, of the Second Principal Sudder Ameen, Baboo Loknath Bose, dated 23d February 1847.

Bhyrubchunder Bose, (Plaintiff,) Appellant,

versus

Mahomed Husein Chowdree, (Defendant,) Respondent.

CLAIM, 332 rupees, the amount of a bond debt.

The plaint sets forth that the defendant, in the month of Bhadoon 1252, borrowed from the plaintiff 300 rupees, and gave a bond for the same, and promised to pay off the amount of the bond, with interest, in the month of Magh in the same year. This was not done, and the suit was instituted on August 13th 1846, (corresponding with 30th Srabun 1253.) The bond is filed and bears the signature of Mahomed Husein Chowdree. The defendant, in his answer, denies the transaction of the borrowing of the money, and the signature on the bond, which he declares is forged. He says he knows not the plaintiff, and to the best of his knowledge never saw him; and the cause of the institution of the case, he states, is owing to some relations of his, Fuzul Ahmed Chowdree and Irfanuddcen Chowdree, declining to allow indigo advances to be made from some factories belonging to the plaintiff's relations, Ram Ruttun Roy and Hurnath Roy, to the ryots of certain villages in their zemindaries. Much bad feeling was excited by the quarrels of the families, and the institution of this false case was one of the many expedients resorted to by the plaintiff to injure and annoy the family of the defendant. The defendant moreover says that, if the plaintiff will come into court and swear to the truth of his case, he is ready to pay the demand.

The second principal sudder ameen places no faith in the validity of the bond. He says, in the first place, that the witnesses to it depose to the stamp paper, on which it is written, having been purchased by the defendant, whereas the name of the purchaser on the back of the bond is that of one of Ram Ruttun's servants, and is the same person

who purchased the stamp paper on which the plaint is written and the power of attorney, and the list of witnesses is on stamp paper purchased by the same individual. Moreover, the expences for carrying the suit were paid in by Gunga Govind Roy, the agent of Ram Ruttun Roy and Hurnath. The principal sudder ameen considers, therefore, that though Bhyrub Chunder Bose is nominally the plaintiff in the case, yet that he had not the capability of advancing such a sum of money, and that Ram Ruttun has borne the expenses of the suit. He also says that the date of the purchase of the stamp paper on which the bond is written, and that on the stamp paper of the bond in another case (No. 27) between the same parties, is the same; that the one bond is dated 27th Bhadoon, for 300 rupees, and that the other is dated 29th Bhadoon, two days afterwards, for 295 rupees; and that there is no reason stated nor any apparent cause for these money transactions. The witnesses to the bond state they witnessed the paying of the money and the signing of the bond. One witness says that he went to the plaintiff's house to borrow some money, and the three witnesses to the other bond in case No. 27, give the same reason for their having been present when the bond was executed. The principal sudder ameen called on the plaintiff in the case to appear in court and swear to the truth of it, but this he declined to do. Under these circumstances the principal sudder ameen dismissed the case.

In appeal in my court, the plaintiff (appellant) declares that the principal sudder ameen has no proof for what he states as his reasons for dismissing the case; and that it is not known who the purchaser of the stamp paper by name Zumeerooddeen is or was; and that though he allows that the stamp paper on which the plaint was written was purchased by one Zumeerooddeen, a servant of his, yet that it does not appear that he was the same Zumeerooddeen who purchased the stamp paper for the bond; and that though the agent for Ram Ruttun had paid into court the expences of the suit, yet that his claim cannot suffer by this circumstance as the mookhtyars are allowed to carry on the business of many masters. All these explanations I consider frivolous and unsatisfactory; and I am of opinion that the reasons given by the lower court for dismissing the case are well founded and the judgment correct. It may be urged that there is an improbability of two large and wealthy zemindars like Ram Ruttun Roy and Hurnath Roy, going to the expence of concocting and of carrying on such suits, because the interests of their indigo factories were interfered with by relations of the respondent; but my experience in this zillah tells me that these two men are most litigious neighbours, and care not to what means they resort to injure those who oppose them and to crush the weak and helpless. To carry their point they hesitate not to have recourse to the most illegal and sinful measures. The plaintiff in this case when called on by me appeared in my court and swore on

oath to the truth of his suit, but in this I put no faith, but consider that in so doing he only added the crime of perjury to that of forgery. Bhyrub Chunder is a cousin of Ram Ruttun Roy, and is connected with him in many ways. I confirm the decision of the lower court.

THE 3D MAY 1848.

Case No. 27 of 1847.

Regular Appeal from the decision of the Second Principal Sudder Ameen, Baboo Loknath Bose, dated 23d February 1847.

Bhyrub Chunder Bose, (Plaintiff,) Appellant,

versus

Mahomed Husein Chowdree, (Defendant,) Respondent.

CLAIM, rupees 326-1. The amount of a bond debt with interest. This case is intimately connected with case No. 26, and met with the same fate in the second principal sudder ameen's court. The bond was between the same parties, and was dated two days after that which formed the cause of action in case No. 26. The bond, in my opinion, is false and forged, and the witnesses suborned. The order is the same as in case No. 26.

THE 3D MAY 1848.

Case No. 37 of 1845.

Regular Appeal from the decision of the Second Principal Sudder Ameen, Baboo Loknath Bose, dated 16th August 1845.

Mr. John Driver, Mr. Thomas Brae, and others, (Defendants,) Appellants,

versus

Mr. Louis Durep de Dombal, (Plaintiff,) Respondent.

CLAIM, to set aside a decision under Act IV, of 1840, and to obtain possession of a talook with mesne profits, laid at 480 rupees.

"This case was decided by me, on the 14th of January last, and the following is my decision. Mr. Durep de Dombal sets forth in his plaint that he purchased certain lands named Dooljoura from one Kaseenath, that he was in possession of the said lands, and that the defendants forcibly dispossessed him of the said lands, and that a case under Act IV. of 1840 ensued, by which they were held in possession by the magistrate. In the principal sudder ameen's court the

plaintiff establishes the purchase of the property, his consequent right thereto, and the injustice he suffered by the summary decision of the magistrate. This decision was therefore upset by the principal sudder ameen, and possession and wasilat decreed in favor of the plaintiff. The investigation of the lower court is regular throughout, and the order correct. I therefore confirm it." In this order I omitted to award the costs of the respondent in my court to be paid by the appellant, and I obtained the permission of the Sudder Dewanny Adawlut for a review of judgment, which was granted to me in their letter under date 6th April 1848.

The omission is therefore hereby rectified, and the appellant ordered to pay the costs of the respondent in my court.

THE 9TH MAY 1848.

CASE No. 29 of 1847.

Regular Appeal from the decision of the Second Principal Suddler Ameen, Bahoo Loknath Bose, dated 11th March 1847.

Debnarain Ghose and another, (Plaintiffs,) Appellants,

versus

Janokee Chowdrain, widow of Kumlakant Roy, deceased, and
fifty-three others, (Defendants,) Respondents.

CLAIM, possession of certain lands, with mesne profits and interest thereon, laid at rupees 1,577, 10 annas, 6 gundahs, 1 cowrie, 2 krants.

The plaint sets forth that the plaintiffs purchased from one Kaseenath Ghose the half share of a jumma, which in the books of the talookdar amounted to rupees 201. The jumma consisted of four kismuts in the talook of Hunlaburakalee. The purchase was made in 1233; and in the year 1236, in the month of Aghun, the plaintiffs were dispossessed of a certain quantity of land in the village of Seroolee, amounting to 9 pakee, 18 k. 2.

In the year 1237 Kaseenath sold his half of the jumma to the plaintiffs also, and gave them the power to institute a case for the recovery of the land of which they had been dispossessed, and of the wasilat of the same, and therefore this case is instituted.

The principal defendant in the case, one Reeyut Allee, denies the power of the plaintiff to sue in behalf of Kaseenath, and says that the document he produces to that effect is forged, and that the land to which the plaintiffs lay claim is the property of another party, and that the law of limitations ought to preclude the claim of the plaintiffs.

The principal sudder ameen says that the points of the case to be looked into, are, whether the plaintiffs were dispossessed in 1232 or 1234, and if in 1232, whether the law of limitations applies or not, and whether the plaintiffs had the power to sue for the share or part of Kaseenath, and whether the land ever belonged to Kaseenath. The witnesses for the prosecution deposed that the dispossession commenced in 1234; but their evidence the principal sudder ameen considers unworthy of credit, for their memories are unsupported by documents, or memoranda, or any account, and the plaintiffs stated that in the year 1232 Kaseenath was ousted from a part of his land by Reeyut Allee's father, and that Sreenath, on the part of Kaseenath, complained to the police, and that in consequence of the interference of the police this illegal conduct was stopped; but no copy of these proceedings, or of any order in the case, is produced; and the principal sudder ameen thinks that these two cases are mixed up together, though the quantity of land does not correspond, and as a case was formerly instituted in the moonsiff's court of Lohagora in 1245, for the recovery of possession of this land, by the plaintiffs, in which dispossession was stated to have occurred in 1234, and the doubt and confusion as to the date of dispossession are greatly increased, and therefore, as the date of dispossession, the cause of action, is not proved to have occurred within 12 years, the case must be dismissed. The facts of the case, as detailed by the principal sudder ameen, as to the dates, are quite correct; and I consider the law of limitations to preclude the hearing of the case, and therefore dismiss the appeal with costs.

THE 11TH MAY 1848.

Case No 70 1846.

Regular Appeal from the decision of the Second Principal Sudder Ameen, Baboo Lokenath Bose, dated 19th November 1846.

Bunmalee Bhuttacharj, son of Bissonath Bhuttacharj, deceased,
(Defendant,) Appellant,

versus

Nusseemah Beebee, wife of Moulvee Gholam Shureef, and five others,
(Plaintiffs,) Respondents.

CLAIM, possession of a jaumma, with mesne profits, laid at 1,441 rupees.

The plaint sets forth that Gholam Shureef in 1225 obtained, from the naib of the zemindars of pergunnah Bhagmarah, an umulnamah, or deed empowering the taking possession of certain lands in the

two mouzahs called Shikarpore and Pikeparah, and holding them for ten years; and that he accordingly got possession of the same, and subsequently in the year 1235 he obtained a (*haim pottah*,) perpetual lease of the same land from the naib then in power, and that in 1242 he was dispossessed of the same by the defendants.

The defendant, Bunmalee, comes forward, declaring himself to be the farmer of the lands in question, holding them direct from the zemindars, and says that the case is untenable from the informal and illegal manner in which it is drawn up, and undeserving the attention of the court, and that as Mr. Elliot Macnaghten, late receiver of the Supreme Court, is included among the defendants, and as that gentleman has proceeded to England, and could not have a notice served upon him, the case ought to have been non-suited. And he acknowledges the possession of the lands by the plaintiffs from the date of the umulnamah up to the present time through the instrumentality of that document, and he denies that they have ever been dispossessed, but says that they are his ryots, and became so on his taking the lease of the lands from the zemindars, and that they hold no perpetual lease for the lands from the naib of the zemindars, and that these ryots of his, hearing that he was going to prosecute them for arrears of rent, came forth as plaintiffs in this suit and complained of dispossession.

The principal sudder ameen declares that dispossession is proved in 1242, and he decrees possession and wasilat to the plaintiffs, on the grounds that the possession for the period of the umulnamah, and subsequent thereto, by the documents of the plaintiffs and the admission of Bunmalee defendant, is clearly established, and though by the Regulation it is not in the power of the zemindar's naibs to give perpetual leases, yet that it would be unjust to turn out those who by such titles had held possession of lands for seven or eight years by the tacit admission of the zemindars, and quotes Regulation VIII. 1793, and Regulation IV. of 1794, in support of this opinion.

Against this decision the defendant, Bunmalee, appeals, and still asserts that the respondents are in possession, and that this is proved by the witnesses and denies the dispossession. On looking over the papers I see many reasons to differ in opinion with the lower court. In the first place I do not consider that dispossession is satisfactorily proved. That witnesses are not uninterested witnesses, and they appear too anxious to prove the ousting of the respondents from the land in 1242, whereas the fact of the respondents being still in possession is proved by three or four men whose evidence I have no reason to doubt; and a copy of petition, given into the civil court, 26th May 1847, corresponding with 25th Bysack 1244, by certain ryots of the land in question, intimating that they are the ryots at that time of Nusseemah Beebee, (respondent,) and that they are unable any longer to

pay their rent, and are compelled to give in an isteeffa of their jumma, proves their possession in that year. And though I do not consider that by Regulation VIII. 1793, the pottah of the naib of a zemindar is valid, yet the umulnamah granting the ten years' lease and the pottah subsequent to that prove that the respondents held, and may still hold, as far as it is proved to the contrary, possession of the land; and as the zemindar does not come forward to test, or to request an examination into the validity of the latter deed, it is unnecessary to take up the point. The order of the principal sudder ameen is therefore reversed. Buninalec (the appellant) will be reimbursed for the costs of both courts.

THE 12TH MAY 1848.

Case No. 57 of 1846.

*Regular Appeal from the decision of the First Principal Sudder Ameen,
Moulvee Lutf Hussein, dated 24th July 1845.*

Nobin Chunder Moonshee and Gungagovind Moonshee, (Plaintiffs,) Appellants,

versus

Rammoney Dassea and Uhoolea Dasseah, wives of Kissendhun Moonshee, (Defendants,) Respondents.

CLAIM, Company's rupees 2,253.

This suit was brought by the plaintiffs in the principal sudder ameen's court against the defendants, to recover the sum of 2,253 rupees, being principal and interest of their five annas and ten gundahs share of the sum of Sicca rupees 3,073-1-6-2, the amount of wasilat decreed to the defendants' father-in-law, Indernarain Moonshee, to which they lay claim. The decree was against one Gooroo-pershad Nundy, and was decided in the civil court of this zillah.

The defendants admit the right of the plaintiffs to the 5 annas 10 gundahs share of the wasilat; but they say that the same has been paid by their husband, Kissendhun Moonshee, in the following manner, viz., the sum of 1,027 rupees to one Suleemollah Chowdree, to satisfy his decree against the plaintiffs' grandfather, Neelkant Biswas, and that the remainder was paid to Bhuggobutty Dassiah, the mother of the plaintiff, Gungagovind Moonshee.

The plaintiffs, in their rejoinder, declare the explanation and answer of the defendants to be false, and say that the claim of Suleemollah was liquidated by Bhuggobutty, the mother of one of the plaintiffs, by disposing of her share in an estate, turuf Chaprah, to

the defendants' husband, Kissendhun Moonshee, and that they hold documents to prove this.

The principal sudder ameen decreed for the plaintiff only 65 rupees, on the strength of a receipt granted by Suleemoollah's mookhtar, to the collector for 1,027 rupees, and which he considered should be looked upon as a set-off of the plaintiff's claim, as the liquidation of Suleemoollah's claim against Neelkant Biswas.

Against this decision the appellants (plaintiffs) sought redress in my court. The chief point for consideration in the case is, in my opinion, the nature of the receipt of Suleemoollah Chowdree's mookhtar. It must be discovered for what money this receipt was given, and where it came from. That it was in liquidation of Suleemoollah's claim on Neelkant, there can be no doubt; but the point at issue is whether it was paid as part of the wasilat to the appellants as their share, or whether it was the proceeds, or in payment of the share of turuf Chaprah, disposed of to the respondents. A copy of a bill of sale for the 5 annas, 10 gundahs of turuf Chaprah, between the parties Bhuggobutty Dassiah and Kissendhun Moonshee, is filed; and in this it is expressly stated that this transfer of property took place for the purpose of paying off the debt of Suleemoollah. This deed is dated 13th Bhadoon 1241. And there is a petition dated 14th of the same month, presented by Kissendhun's mookhtar, to the deputy collector of Pubna, to have his name inserted in the register of mutations as the purchaser of Bhuggobutty's share of turuf Chaprah; and a copy of the collector's advertisement in conformity with the request in this petition is filed with the case, dated 29th August 1834. From this it is evident that the transfer of the share of Bhuggobutty was made to Kishendhun. The purchase money in all these documents is stated to be 901 rupees, and in the petition to the deputy collector of Pubna, on the part of Bhuggobutty, it is distinctly stated the claim of Suleemoollah is to be liquidated by the sum above mentioned, and the two sums of 473 rupees and 126 rupees, the former paid in by herself, and the latter by Kissendhun Moonshee, which he acknowledges to owe her. And the receipts of Suleemoollah's mookhtar are the one for the sum of 1,027 rupees, viz., the 901 rupees, the purchase money, and the debt of Kissendhun 126, and the other for the 473 rupees paid in by Bhuggobutty. Moreover, the respondents can produce no receipt for their share of the wasilat claimed by plaintiffs. Under these circumstances I cannot agree in the decision of the principal sudder ameen, nor can I understand how in his order he has scored off so large a share of the claim of the appellants. His order is upset, and the whole amount decreed to the appellants, with costs of both courts.

In this case I had the assistance of two jurors, in whose opinion I agreed.

THE 31ST MAY 1848.

Case No. 71 of 1846.

Regular appeal from the decision of Moulvee Mooftee Lutf Hussein, First Principal Sudder Ameen, dated 28th November 1846.

Mr. C. Deverinne, (Defendant,) Appellant,

versus

Sumboo Chunder Roy, (Plaintiff,) Respondent.

CLAIM, to set aside a decision under Act IV of 1840, and to get possession of certain lands, with mesne profits, laid at 734 rupees.

The plaintiff says that in the village of Chuttooreah, near the Bheel Kumariah, he obtained pottahs for different quantities of land, and that he was dispossessed of about 40 beegahs of this land by the defendant, that he complained to the magistrate's court, which put him in possession of the land, but that this order of the magistrate was appealed to the sessions judge, who reversed it, and that the defendant, in taking possession of the land decreed to him by the judge, also forcibly possessed himself of 60 beegahs, 20 in excess of the amount decreed; and to upset the award of the sessions judge under Act IV of 1840, and to recover possession of the land with wasilat, the plaintiff brings this suit.

The principal sudder ameen, in his decision, says that both parties claim possession of the land in dispute by holding leases from the proprietors of the land, but that neither of them produce any proofs of the proprietorship being vested in these individuals, and therefore that it is only necessary to enquire which party was first in possession. And then he goes on to say that as it is established in a satisfactory manner by witnesses, that the plaintiff has been in possession for some eight or nine years; and that he was ousted in 1251 B., by the defendant, in consequence of the order of the judge under Act IV. of 1840; and that though the defendant's witnesses endeavour to establish the right of their master to the disputed property for a great length of time, and certain pottahs are produced to show the possession of the land, yet that the dates of all these pottahs are subsequent to those of the plaintiff, and that the evidence fails in making good the defendant's claim, and therefore he decrees possession to the plaintiff, and wasilat from the date of dispossession.

On the case coming before me in appeal, my attention was particularly directed to the dates of the different pottahs, and to my astonishment I find that the facts taken by the principal sudder ameen as the grounds of his decision are incorrectly stated by him. The pottahs of the respondent are not all of a prior date to those of

the appellant. The dates of the pottahs by which the appellant has held possession are 1222 and 1223, whereas the earliest date of the respondent's pottahs is 1243, and the greater part of them is dated after 1247; moreover it is not proved by the papers of the case that those who gave the pottahs to the respondent, had the power to do so. The appellant proves his long possession of the lands by witnesses, and by the measurement papers which were made out by his factory people at the time of the sowing of the indigo. I therefore reverse the order of the court, and dismiss the plaintiff's claim, and the costs of both courts to be paid by respondent.

THE 31ST MAY 1848.

Case No. 72 1846.

Regular Appeal from the decision of Moulvee Lutf Hussein, First Principal Sudder Ameen, dated 28th November 1846.

Mr. C. Deverinne, (Plaintiff,) Appellant,

versus

Sumboo Chunder Roy and 19 others, (Defendants,) Respondents.

CLAIM, value of indigo plant taken away from the lands of plaintiff, laid at rupees 776-4.

The plant sets forth that the plaintiff, in the year 1250 B., sowed some indigo on 4 beegahs of land, and that the defendants by getting up a false case in the magistrate's court, under Act IV. of 1840, got possession of the land by an order of the magistrate, and cut and carried off and turned to their own advantage the produce of the land. The order of the magistrate was upset on appeal to the sessions judge, and the plaintiff got possession of the land, but now prosecutes for the value of the indigo plant. The value of the plant is 750 rupees, deducting all the expences, and the interest is estimated from the time of the probable sale of the indigo, the month of Aghun, up to the date of complaint, at rupees 26-4.

The defendant, Sumboo Chunder Roy, replies that to upset the Act IV. of 1840 case, he had instituted a different case; and that the land on which the indigo was grown, was his own land, which he held by pottahs, and that the indigo had been sown by him.

The principal sudder ameen dismissed this suit for the same reason that he decreed case No. 71 above, in favor of Sumboo Chunder Roy, and rested his decision on the pottahs produced by the different parties.

In case No. 71, I have pointed out the mistake regarding the late of the pottahs, and by these documents the appellant's possession, and the witnesses prove the sowing of the ground by the people of

Mr. Deverinne, and the attempt of Sumboo Chunder's men forcibly to get possession of the land, and the land being made over with the plant on the ground eventually to Sumboo Chunder by the magistrate's order.

I therefore reverse the order of the lower court, and decree the case in favor of the appellant, with the costs of both courts.

ZILLAH MIDNAPORE.

PRESENT: H. RAIKES, ESQ., JUDGE.

THE 1ST MAY 1848.

Case No. 43 of 1848.

*Appeal from a decision of Mr. C. Mackay, Principal Sudder Ameen,
passed on the 16th February 1848.*

Gungaram Dey and others, (Defendants,) Appellants,

versus

Urjoon Baryk, (Plaintiff,) Respondent.

THIS case was decided on a former occasion, and petitions of appeal preferred by both parties dissatisfied with the judgment of the lower court. It was then remanded for a proper enquiry into the real points at issue, which did not appear to the court to have been clearly defined in the proceedings of the sudder ameen. In this manner it was brought on the file of the principal sudder ameen on the abolition of the office of sudder ameen in this district.

The principal sudder ameen states in his decision, that the plaintiff instituted this suit to recover from the defendants the "sum of rupees 382, 8 annas, being his estimated value of crops and personal property, forcibly taken from him, and sold by the defendants, and of loss sustained by him in consequence of their dispossessing him of his jote in their talook." The principal sudder ameen decrees to the plaintiff 107 rupees as compensation for the loss sustained by him from the illegal acts of the defendants, "with possession of his jote in their talook, and wassilat from the date of dispossession to that of possession, with interest thereon from the date that shall have been ascertained in execution of this decree."

As the decree appeared to award more than the plaintiff asked for, that is to say, possession of his jote, I turned at once to the proceedings of the lower court before referring to the matter urged in appeal by the appellants, which was a mere repetition of the replies, and am now of opinion that the case, as it stands, should not have been entertained by the principal sudder ameen.

It appears that the plaintiff presented a petition, stating his cause of action, as required by Act IX. of 1839, and praying to be allowed to institute it *in forma pauperis*.

In that petition he lays his claim against Gungaram Dey, Ghasseeram Dey, and others, talookdars, Bhurut Sheet and Bechoo

Dindah, surburakars, for rupees 382-8, for *loss of crops and personal property* forcibly taken and sold by them. The judge, having satisfied himself there were reasonable grounds of action against these persons, permitted the plaintiff to institute his suit as a pauper; and, on the 10th of July 1844, the plaintiff filed his plaint, but *in addition* to the matter abovementioned he sued to recover *the value of four clumps of bamboos, the profits derivable from the land from which he had been ousted, and added thereto the value of the land itself for possession of which he also recorded his claim*; thus increasing the value of his suit from rupees 382-6 to rupees 603-8; he also filed a supplementary plaint on 30th July 1844, including the names of other parties amongst the defendants, to whom he stated the land had since been leased. As the plaintiff preferred no claim for the bamboos, or for possession of the land, or for its profits, when stating his cause of action, and consequently no preliminary enquiries could be made thereon, under Act IX. of 1839; I consider the plaintiff acted irregularly in including them in his plaint, and that the principal sudder ameen must have entirely overlooked this, and should not have decreed to him possession of the land and wassilat during the time he was dispossessed. Had I any doubt on this subject I might refer to a decision of the Sudder Court on the petition of Hurchand Lahoorree, printed in the Bengalee Gazette of the 3d of November 1846, page 578. In that matter "the Court held that, as on the original petition of a pauper plaintiff, it was necessary under Act IX. of 1839, as explained by Circular Order No. 27, dated 11th August 1843, that the judge should decide as to the existence of sufficient grounds for the institution of a suit, so he was the proper officer to determine whether there was probable cause for instituting the suit against the new defendant and for the new property."

I am of opinion that, under these circumstances an order of nonsuit must be passed against the plaintiff. I therefore decree the appeal, and nonsuit the plaintiff. The stamp fees of the appeal must be returned to the appellants.

THE 2D MAY 1848.
Case No. 153 of 1847.

Appeal from a decision of Gunganarain Mookerjee, Moonsiff of Mohunpore, passed on the 9th of June 1847.

Ram Dey, (Plaintiff,) Appellant,

versus

Rungachurn Dutt, agent of Bhurutchurn Sutputtee, (Defendant,) Respondent.

THIS suit was instituted to set aside a summary decision of the deputy collector, dated the 20th of January 1846, awarding to the

defendant, the sum of 8 rupees, 6 annas, 3 pie, 2 gundahs, on account of rent for the year 1252 Umlee, on 6 beegahs, 9 cottahs of land.

It appears that the defendant having attached the property of the plaintiff for a balance of rent for the year 1252 Umlee, the plaintiff gave security and brought the matter before the revenue court in a summary suit. His statement was, that he held 15 beegahs, 9 cottahs of land in the village of Turronee, mortgaged by the defendant's employer, Bhurutchurn Sutputtee, to Permanund Surungee, who had procured a decree for possession of the village, which was given up to him in Agrahun 1251 Umlee; that he thereupon agreed to pay his rent to Surungee as the new landlord, and had done so for the years 1251 and 1252, receiving from him receipts and releases for the same; notwithstanding this, Sutputtee's agent had demanded rent for 1252, for 6 beegahs, 9 cottahs, calling his master's rent-free dewutter land.

Permanund Surungee filed a petition, corroborating plaintiff's statement, and acknowledging that he had received from him the whole of the rent for the years 1251 and 1252 Umlee.

The defendant, in his reply, admitted that the village had become the property of Permanund Surungee, as stated by the plaintiff, but that his master, the former proprietor, still holds certain rent-free dewutter lands therein, which were confirmed to him by the resumption authorities, and of this the plaintiff has held 6 beegahs, 9 cottahs, since 1246 Umlee, for which he holds his kubooleut; that the plaintiff, in collusion with the new proprietor, withheld the rent and resisted the demand, in order to deprive him of the rent-free lands; he therefore proceeded to distrain his property to levy the amount.

The deputy collector decreed the ryot to pay the amount.

When the case was brought before the moonsiff, he confirmed the decision of the deputy collector, stating a very long opinion on the subject, and deciding that the land was the rent-free property of Bhurutchurn Sutputtee, and that the plaintiff had entered into distinct engagements with them for it, in the kubooleut drawn up in 1246 Umlee.

The appellant repeats the matter of his former pleadings in this appeal, and states that he has held his 15 beegahs, 9 cottahs, as one jote, having never understood that it comprised both rent-free and māl lands; that he never gave a kubooleut for rent-free lands, in 1246, to Bhurutchurn Sutputtee, as alleged by the defendant, the kubooleut produced being a forgery; that he never received any pottah at all, as the delivery of such engagements was not customary in the village; but that his receipts and releases from 1248 to 1250, show that he has always paid his rents without any distinction being recorded that any part of it was for the

rent-free land of the talook. Of any such distinction he was altogether ignorant, and had therefore not hesitated to pay his jumma to the new talookdar since he came into possession.

JUDGMENT.

The papers in this case clearly shew that 35 beegahs, 9 cottahs of rent-free dewutter land was confirmed to Bhurutchunder Sutputtee, as part of a valid grant. The question then incidentally presents itself, whether the land for which rent was demanded from the plaintiff be a portion of the māl or of the lakhiraj land comprised in the village. As the former is now the property of Permanund Surungee, this question very nearly affects his rights, he has therefore come forward to back up the plaintiff's case, and it may be surmised that the real motives of these parties is the possession of the rent-free lands. But the question between the plaintiff and the defendant is merely this: was the latter justified in taking rent for 1252, for 6 beegahs, 9 cottahs of land held by plaintiff? In determining this point the courts are not required to give any opinion regarding the proprietary *rights* of the parties concerned.

The defendant has put in a kubooleut of the plaintiff, dated in 1246 Umlee, to prove that the plaintiff at that date entered into a distinct engagement for the lands in question. In this document the land is described as rent-free dewutter; the different dags comprising it are recorded, and the names of their former occupants mentioned. But I place no reliance on this as the act of the plaintiff. It is virtually contradicted by the fact that no kubooleut is forthcoming for the rest of the land held by the plaintiff, which the defendant does not deny he did hold with the land in question; and I therefore deem it quite irreconcilable that the proprietor should have taken engagements from his ryots for one description of land in his talook, and not done so for the rest, nor is it probable that the plaintiff, while only holding 15 beegahs, 9 cottahs of lands altogether, would acknowledge engagements for that quantity with the talookdar, if he had also given a kubooleut to the late proprietor for 6 beegahs 9 cottahs of the same land as rent-free dewutter, the rent of which he must know would still be claimable by that person. I am therefore inclined to believe that no engagements of *this nature* were taken from the ryots; but that they held their lands, as stated by plaintiff, and paid their rents according to the malguzaree papers yearly prepared for that purpose. But though I set aside the kubooleut for these reasons, I do not think this affects the defendant's claim for rent. That claim depends, in my opinion, entirely on the fact of Bhurutchurn Sutputtee being at the time *in possession* of the proprietary rights *quoad* the land in question.

With reference to this point it may be observed that, although Permanund Surungee, the mortgagee proprietor, denies the existence of any rent-free lands in the village, yet the defendant proves

the contrary by filing a resumption decree in which it is recorded that 35 beegahs, 9 cottahs of rent-free dewutter land situated in this village are confirmed as such to Bhurutchurn Sutputtee. There is no proof whatever that this land has ever passed out of the possession of the then proprietor. I therefore consider it must be inferred, until the contrary is proved, that he still exercises proprietary rights over it. With regard to the position of the plaintiff, it is quite possible and most probable that he holds some of this land in his jote, and that while the proprietary rights of the whole village were vested in the same person, no distinction was thought of, but when the *mâl* lands were given up to another, the separation of interests took place as a matter of course. As this demand of rent is for the year following this division, I am of opinion, the *continued possession* of the old proprietor, over what he asserts to be the rent-free lands, may be justly inferred. Another reason in favor of this opinion is the fact that the plaintiff can produce no documents in proof of his assertion that the whole of his jote is and has always been treated as *mâl* land. He allows that he has yearly received the malguzaree papers according to which he paid his rent. Were these papers before the court some knowledge of this fact might be attainable, but it may be supposed the plaintiff has reasons of his own for suppressing them. The plaintiff therefore has failed to prove that he was justified in paying the rent to the talookdar, or that *possession* of the land in question had been relinquished by the defendant's employer. I dismiss the appeal on the above grounds, and confirm the moonsiff's order to the extent of upholding the deputy collector's decision. But I do not agree with the moonsiff regarding the validity of the kubooleut filed by the defendant, nor do I intend by this judgment to decide whether these 6 beegahs, 9 cottahs of land are or are not part of the old proprietor's rent-free grant, but deem him entitled to the rent, because he has *retained possession* of them, as such, having continued to receive the rents, and that if his *rights* are disputed, the question must be tried in a different form and does not properly constitute a point for the investigation of the court in the present action.

THE 3D MAY 1848.

Case No. 155 of 1848.

Appeal from the decision of Gunganarain Mookerjea, Moonsiff of Mohunpore, passed on the 14th of June 1847.

Bhuggoo Giree, (Plaintiff,) Appellant,

versus

Runga Churn Dutt, agent of Bhurut Churn Sutpattee, (Defendant,) Respondent.

THE circumstances under which this suit was brought are precisely similar to those of No. 153, decided yesterday (2d of May.)

The plaint was for 11 rupees, 11 annas, 9 gundahs of rent levied by the defendant on account of 3 beegahs, 4 cottahs of land, called rent-free dewutter land, in the village of Chardah, confirmed to the defendant's employer as part of a valid lakiraj tenure.

The plaintiff objected to the payment of the rent in consequence of the mal land in the village having been made over to Permanund Surungee as mortgage-purchaser of the talook, who admitted having received the rent for the 1252 Umlee, the year in question.

The decision in the case No. 153, is strictly applicable to this case also, and on the grounds therein recorded this appeal is likewise dismissed.

THE 5TH MAY 1848.

Case No. 158 of 1847.

Regular Appeal from a decision of Kaleenath Chatterjea, late Moonsiff of Pertabpore, passed on the 8th of June 1847.

Greedhurjur Sonar, (Plaintiff,) Appellant,

versus

Seetoo Mundul and another, the heir of Kanye Mundul, (Defendant,) Respondent.

THE appellant instituted this suit to recover from the respondents the sum of 260 rupees, being principal and interest of money lent as per bond dated 12th July 1839.

The defendant, Seetoo Mundul, only replied and denied the debt, stating that his father, deceased, (in whose name as well as his own the bond was drawn up,) was at the time mentioned in Calcutta, attending at one of the public dispensaries for the cure of a wound in his leg.

The moonsiff for the following reasons considered the appellant's case was not proved. The names of four witnesses were attached to the bond, but, if these only Muddoo and Mooktaram gave evidence in the plaintiff's favor, the other two denied all knowledge of the transaction. Muddoo moreover having mentioned the names of two individuals as being present when the bond was written, they were also summoned, but, on being examined, declared they neither knew Muddoo nor the defendants. The moonsiff then observes that he can place no reliance on the testimony of the witnesses produced by the plaintiff, as they gain a livelihood by giving evidence, and have been named as witnesses and have recorded their evidence in ten or twelve different cases at different times and in different places; that

in the present instance their testimony is open to grave suspicions, for they come forward to prove a bond which was drawn up at the plaintiff's house, but are not his neighbours, on the contrary they live at a distance from him and are inhabitants of different villages and unlikely to be concerned together in any transaction. Under these circumstances the moonsiff states he does not consider the bond has been proved by the evidence of two credible witnesses, as required by Section 15, Regulation III. of 1793, and therefore dismissed the plaint.

The appellant urges that, though two of his witnesses withheld their evidence, one of whom was proved to have taken six rupees from the defendant's mookhtar at the moonsiff's court, yet two others deposed in his favor; that the defendant had failed altogether to prove a certificate he pretended had been received by his father from the medical officer at the dispensary in Calcutta, and had therefore tampered with his witnesses, two of whom he had brought over to suppress their evidence, but that this fact ought not to be taken against him.

JUDGMENT.

I quite concur with the moonsiff in considering the witnesses produced by the plaintiff are persons unworthy of credit. Muddoosooden, the writer of the bond, owns that he has given evidence in nine or ten similar cases, and the other witness, Mooktaram, who deposes to having been present when the money was lent, admits that he has been summoned as a witness in eleven or twelve different suits of this description. But when examined regarding the circumstances of those cases, they appear to have escaped their memories. Another of the witnesses, named Golaub Khan, was clearly proved to have taken six rupees from the defendant's mookhtar after he had been summoned to the moonsiff's kutcherry; and the money was found upon him. Though the plaintiff urges that this fact cannot be directly pressed against his case, yet in my opinion it goes a great way to shew the real character of the witness, and it must be remembered that this man who has so impudently taken money at the very door of the court to withhold his evidence, was one of those called upon by the plaintiff to substantiate his case. Had the other witnesses been unimpeachable, this incident could not affect the plaintiff's case; but as it is admitted by those parties that they are in the constant practice of giving evidence in the courts, no court can safely rely upon their single testimony, unsupported, as it is in the present instance, by the slightest presumptive proof. I therefore see no reason to interfere with the moonsiff's order, and dismiss this appeal.

THE 11TH MAY 1848.

Case No. 162 of 1847.

Appeal from a decision of Akber Alee, Moonsiff of NemaI, passed on the 16th of June 1847.

Nurhuree Nund, (Plaintiff,) Appellant,

versus

Seeroo and Durpudder, (widows of Pursuttum Komaree,) and others,
(Defendants,) Respondents.

THE plaintiff sued to recover the amount of a bond, dated the 9th of Sawun 1248 Umlee. Value of suit laid at rupees 257, annas 13. The defendants deny the debt.

The moonsiff, advertng to the bond, observes that it is a very suspicious document, that the names and signatures of some of the parties, and also the names of some of the witnesses, and part of the bond itself, are written in a different hand, and in different ink from the rest of the document, and that the witnesses produced to attest the deed were unable to account for it. The moonsiff, believing the bond to be spurious, dismissed the suit.

The appellant reiterates the pleas brought forward to establish his claim in the lower court, but for the following reasons I uphold the moonsiff's decision.

The bond is drawn up on stamp paper in the Oorya language. At the first glance it is apparent that the names of the two persons which comprise the first line of the bond have been recently added, both in this place and in the margin, where their signatures are inserted. Further proof of this is afforded by the wording of the deed itself. It purports to have been the act of three individuals Debee Komaree, Narain Komaree, and Pursuttum Komaree, and contrary to custom in the Bengalee translation the word निश्चित is prefixed to each name.

The repetition of this word has evidently been made to avoid the singularity of its insertion before the name of Pursuttum Komaree, which is the last name now, but commences the second line, and was, I believe, the only name recorded when the document was first drawn up. The fact that only one individual was originally mentioned is still more clearly indicated by the use of the personal pronoun singular in the body of the deed. In the document as it now stands, three persons are represented to be acknowledging the loan, yet the personal pronoun *I*, instead of *we*, is used to signify their assent.

The witnesses were quite unable to reconcile these flaws, and only one of them attempted to do so by stating that the writer of

the bond had employed two inks and two pens in drawing up the deed.

It is my opinion that when additions and alterations are observable in deeds of this nature, the court must look to the attesting witnesses to explain or account for them in such away that it may feel satisfied such interpolations were made in their presence, and with the knowledge and consent of the parties concerned, and only under those circumstances can such documents be admitted. In the present case the insertion of the names of certain parties at the commencement of the deed and of their signatures in the margin are self-apparent additions, and the context of the writing itself goes to prove that originally only one individual was concerned. These contradictions afford reasonable ground for suspicion, and the witnesses could give no explanations to remove the objections taken by the lower court. I therefore dismiss the appeal.

THE 12TH MAY 1848.

Case No. 164 of 1847.

Appeal from a decision of Nitamund Roy, town Moonsiff, passed on the 15th June 1847.

Rampersaud Mytee and another, (Defendants,) Appellants,

versus

Gourmohun Putnaik, (Plaintiff,) Respondent.

THE plaintiff instituted this suit for the value of trees and bamboos cut down and taken away by the appellant from land held by him as jotedar. Suit valued at rupees 60-9-17.

The appellants denied having injured the plaintiff. Rampersaud stated that the plaintiff had taken a pottah for some land from his father the proprietor, but, being unable to cultivate it, had thrown up the engagement, and the land was then given in jote to the other appellant; that the plaintiff subsequently attempted to recover and cultivate the land, but he had prevented him, which proceeding had given rise to the present action.

The moonsiff observes that the plaintiff put in a pottah, and also a ticket drawn up by the measuring ameen on the part of Government, attesting plaintiff's possession of the land, he likewise proved the damage done him by the appellants in cutting down and carrying away the trees. The moonsiff considered the defence set up by the appellants was not proved, for they could produce no document in proof of their assertion that the plaintiff had of his own accord relinquished the land, and the probabilities of this were against them, inasmuch as the plaintiff only took the jote in Assar 1247, and was not likely to have thrown it up, (as stated by Rampersaud,) in Falgoon 1248. The appellants summoned some witnesses; but

though brought into court and given over to them, they never produced them for the purpose of recording their evidence, and they were dismissed on their presenting a petition, after three months' attendance, complaining of the hardship and their inability to prove any thing for the appellant's case.

In appeal the same statements were repeated for the appellants; but I consider the plaintiff proved his possession before the moonsiff, and that that functionary decided the case according to the evidence before him, the appellants having produced no proof in support of their pleas, I therefore confirm the moonsiff's decision, and dismiss this appeal.

THE 15TH MAY 1848.

Case No. 166 of 1847.

Appeal from the decision of Khyrat Hossein, Moonsiff of Kassigunge, passed on the 19th of June 1847.

Brijomohun Behra, (Plaintiff,) Appellant,

versus

Bydenath Deh, (Defendant,) Respondent.

THE plaintiff instituted this suit for the balance of a kistbundee, which he stated the defendant had entered into on the 7th Pouse 1252, in liquidation of an old account between them.

The defendant denied having borrowed money previous to the date of the kistbundee, and that document also.

The moonsiff observes in his decision, that the kistbundee is irregularly drawn up, that it should explain what part of the amount is principal, and what is on account of interest, that the witnesses could not satisfy him on this point. The moonsiff also remarks that the reason alleged for this kistbundee was the existence of a certain bond which it cancels, but it is not apparent from the plaintiff's plaint whether the defendant borrowed two rupees or seven rupees or ten rupees, and what rate of interest has been claimed, and whether such could be legally admitted. For these reasons the moonsiff dismisses the case.

The decision of the moonsiff is clearly wrong. The plaintiff sues for the amount of a kistbundee, which he states was agreed to by the defendant after a settlement of their accounts on the 7th of Pouse 1252. The defendant denies having contracted a debt, or given the kistbundee to plaintiff. The court in trying this claim is not necessarily obliged to enquire into past accounts, or to require from the plaintiff a statement of the exact sum which was previously due to him for principal and interest. All that the court has now to do, is to investigate the truth of

plaintiff's claim as to whether or not the defendant signed and delivered the kistbundee and has not paid the amount. On this point the moonsiff has given no decided opinion, but has rejected the kistbundee as irregular. I therefore return the case to the moonsiff, who, with reference to the above remarks, will re-try the case, and record his opinion.

THE 15TH MAY 1848.

Case No. 168 of 1847.

*Appeal from a decision of Khyrat Hossein, Moonsiff of Kassigunge,
passed on the 22d of June 1847.*

Ramnarain Chuckerbutty, (Defendant,) Appellant,

versus

Chytun Churn Chuckerbutty, (Plaintiff,) Respondent.

THE plaintiff instituted this suit to recover from the defendant (appellant) the value of a brass waterpot, which he had forcibly taken from the ghaut of a tank where the plaintiff's woman had placed it. Value of the waterpot, 8 rupees, interest 12 annas.

The appellant denied having ever taken away the waterpot, and declared he was on the date in question absent from the village.

The moonsiff states that two witnesses deposed to the fact of the appellant having taken away the waterpot as stated by the plaintiff, and three others to the circumstance of a punchayet having been summoned to enquire into the matter; and that the appellant had in their presence informed the punchayet that he had taken possession of the waterpot, because the plaintiff had taken one which belonged to him at the performance of Issore Juna's funeral rites; and that he would restore plaintiff his property on his giving up the waterpot he claimed. The moonsiff remarks that the appellant brought forward no witnesses, or proof of any kind, to set aside the plaintiff's case: he therefore decreed to him the value of the waterpot, and 12 annas interest on it, from the date of the loss.

It was urged in appeal that the appellant was absent from the village on the date stated by plaintiff; and that if appellant had forcibly taken possession of the waterpot, plaintiff would certainly have complained to the police; that the real cause of the action being brought against him was this, that plaintiff had borrowed from him various sums of money, and knew he was about to institute suits for their recovery, he had therefore got up this case to distress and alarm him; that the moonsiff had decided the case at one hearing without giving him time to file a rejoinder, or to bring forward his witnesses.

I see no reason to interfere with the moonsiff's decision, which appears to me to be in accordance with the evidence and the probabilities of the case. The defendant stated distinctly in his reply, that he could prove he was not at the village at the time mentioned by the plaintiff, and never gave in any rejoinder at all. The names of his witnesses were given in, and the parties summoned on the 17th of May, two days after the examination of plaintiff's witnesses. The persons summoned were brought to court and made over to the defendant, and on the 15th June he prayed for one day's delay to have their evidence recorded, yet he never again brought them forward, though the case was not disposed of till the 22d of the month.

I therefore consider the appellant was unable to prove his assertions, or disprove the facts alleged in the plaint, and dismiss this appeal, confirming the decision of the moonsiff.

ZILLAH MOORSLEDABAD.

PRESENT: H. P. RUSSELL, ESQ., JUDGE.

THE 23D MAY 1848.

No. 21 of 1845.

Regular Appeal from the decision of Moulvee Syed Abdool Wahid Khan, First Grade Principal Sudder Ameen of Mo-rshedabad, dated the 31st July 1845.

Mr. Hudson, manager on the part of Deverinne, &c., proprietors of the Jungypore concern, &c., (Defendants,) Appellants,

versus

Mr. Mascarenhas, late of Bangsurrah factory, and Rance Soorjmonce Debea, part proprietress of pergunnah Lushkerpore, (Plaintiffs,) Respondents.

Rupees 2,826-13-8. Value of indigo.

THE plaintiffs sued Mr. Hudson, the manager of the Jungypore indigo concern, on the part of Deverinne and Co., Mr. Clarke and others, dependants of Mr. Holroyd, assignee of the late firm of Cruttenden, Mackillop, and Co. Bhowanneepersaud Rae, Bholanath Rae, and Terlochun Rae, ijaradars, or farmers of pergunnah Lushkerpore, for the value of indigo, on account of plant forcibly cut and carried away. The plaintiff stated that Nujeeb Mundul, against whom the suit was also brought, and many other ryots of Paurdear Manick Chuck and Denooseparrah, had entered into engagements for the cultivation of indigo to be delivered at his Bangsurrah factory; that in the months of October 1836, and February and March 1837, they were furnished with seed, which was sown on the land engaged for, in all beegahs 735, 18 cottahs; that in the month of July following, men on the part of Mr. Holroyd, belonging to the factories of Shahpoor and Radhakishenpoor, and other men belonging to the ijaradars of pergunnah Lushkerpore, forcibly cut the indigo, which was carried off to the factories; that complaints were made to the criminal court, and that the plaintiff was eventually referred to the civil court for redress, the plaintiff accordingly brings this action on account of the indigo grown on 63 beegahs, 15 cottahs of land of the ryot Nujeeb Mundul. Indigo plant at 24 bundles to each beegah,

1,530, which at 100 bundles to a vat, gives 15 vats 1 pou, 3 kutchees.

Estimated quantity of indigo at $\frac{1}{2}$ maund to each vat,.....	Mds.	Srs.	Cht.
	7	25	15
	Rs.	As.	Pic.
Value at 225 rupees per maund,..	1,720	14	4
Deduct incidental charges at 15 rupees per maund,	114	15	8
	Sa. Rs....	1,605	14 8

Being, in Company's rupees,.....	1,713	3	11
Interest from 1st August 1837 to 31st December 1842,	1,113	9	9

Amount of suit, Company's rupees..... 2,826 13 8

Mr. Clarke, in reply to the suit, stated that the Jungypore concern had been sold to Deverinne and Co.; that he was a mere servant, having been in charge of the factories of Radakishenpore and Shahpore on the part of Holroyd and as assignee of the late firm of Cruttenden, Mackillop; that Nujeeb Mundul had entered into an engagement to sow indigo plant for those factories; and that when ready it was cut and manufactured, and the produce sent down to Calcutta: he further pleads that it had been proved in the criminal court that Nujeeb Mundul was his ryot, and that the quantity of plant had been overrated.

Mr. Hudson, on the part of Deverinne and Co., pleaded that the Jungypore concern had been purchased by them in November 1838, subsequent to the manufacturing season, and that Mr. Clarke had admitted that the produce of the season 1837-38 had been enjoyed by the former proprietors; and that the purchasers of the Jungypore concern, of which the factories Shahpore and Radakishenpore are a part, were not liable.

The remaining defendants did not defend the case; and the principal sudder ameen, having taken evidence on both sides, adjudged one moiety of the loss incurred by the plaintiff against the factories, and the other moiety against the ijaradars, or farmers.

From this decision both Mr. Hudson and the farmers have appealed under separate numbers. The investigation of the principal sudder ameen appears to me to be defective, he has not explained his reason for making the factories and the farmers respectively answerable for a moiety of the loss the plaintiff has incurred, nor has he taken any steps to ascertain if indigo factories, when disposed of by sale to other proprietors are sold with all liabilities. Mr. Mascarenhas has not appealed from the principal sudder ameen's decision: but in reply to the other defendant's reasons for appealing has brought the circumstance of the principal sudder ameen not having awarded interest to notice. I find that officer assigns as his reason for not granting it, that when the plaintiff brought his first action in the

civil court he did not demand it; but as that suit was struck off the file, it was open to him to demand interest on instituting his action anew. I deem it right therefore to extend the jurisdiction of the appellate court to this point also. The appeal is decreed, and the decision of the principal sudder ameen is reversed: that officer will make good the omissions indicated above, and re-try the case.

The usual order will issue as regards the return of the amount of stamp on which his petition of appeal is written.

THE 23D MAY 1848.

No. 18 of 1845.

Regular Appeal from the decision of Moulvee Syed Abdool Wahid Khan, First Grade Principal Sudder Ameen of Moorshedabad, dated the 31st July 1845.

Mr. Hudson, manager on the part of Deverinne and Co., proprietors of the Jungypore indigo concern, (Defendants,) Appellants,

versus

Mr. Mascarenhas, late of Bansgurrah factory, (Plaintiff,) Respondent.

Rupees 859-8-9. Value of indigo.

THE plaintiff prosecuted the defendant in this case under the circumstances detailed in the appeal No. 21, the only difference being that the ryot is different, viz. Koodrut Sircar,—land 20 beegahs, yielding plant at 24 bundles to each beegah, being bundles 480, which at 100 bundles to a vat, give 4 vats 15 cheetaks.

Md. Sr. Ch.

Estimated quantity of indigo at $\frac{1}{2}$

maund per vat,	2	15	15
Value of the same at 225 rupees per maund, Sa. Rs.,...	539	10	5
Deduct incidental charges at 15 per maund,	35	15	8
	<hr/>		
	Sa. Rs.	503	10 9

Company's rupees.....	537	3	9
Interest,	322	5	0
	<hr/>		

Amount of suit, 859 8 9

The principal sudder ameen in this case gave a decree against the factories of Messrs. Deverinne and Co., without awarding interest. The observations made in case No. 21, as regards the factories and interest, equally apply to this case. The appeal is decreed, and the decision of the principal sudder ameen is reversed, and the case will be returned for re-trial. The usual order will issue as to the return of the amount of stamp on which the petition of appeal is engrossed.

THE 23D MAY 1848.

No. 19 of 1845.

Regular Appeal from the decision of Moulvee Syed Abdool Wahid Khan, First Grade Principal Sudder Ameen of Moorshedabad, dated the 31st July 1845.

Mr. Hudson, manager on the part of Messrs. Deverinne and Co., proprietors of the Jungypore concern, &c., (Defendants,) Appellants,

versus

Mr. Mascarenhas, late of Bunsurrah factory. and Ranee Soorjmonnee Debea, part proprietress of pergunnah Lushkerpore, (Plaintiffs,) Respondents.

Rupees 4,146-7-2, Value of indigo.

THE plaintiff prosecuted the defendants in this case under the circumstances stated in the appeal No. 21, decided this day, the only difference being that the ryots are others, being the late Doulut Moolla, the late Kushai Mundul, and the late Sukeem Mohuldar, and Bunai Mundul, who conjointly entered into an engagement under one document to cultivate indigo, their respective lands amounting in the aggregate to 90 beegahs, 10 cottahs, yielding plant at 24 bundles to each beegah, 2,244 bundles, which at 100 bundles to a vat give 22 vats, 1 pou, 3 kutchees.

Estimated quantity of indigo, at half maund to	Mds.	Srs.	Chts.
each vat,	11	8	12
	Sa.	Rs.	As. P.
Value of the same at 225 rupees per maund,	2,524	3	6
Deduct incidental charges at 15 rupees per maund, ...	168	4	6
	2,355	15	0
Being in Company's rupees	2,513	0	0
Interest from 1st August 1837 to 31st December, 1842,	1,633	7	2
Amount of suit, Company's rupees,	4,146	7	2

The appeal is decreed, and the order of the principal sudder ameen reversed; the case will be returned for re-trial. The usual order will issue as regards the return of the amount of the stamp, on which the petition of appeal is engrossed.

THE 23D MAY 1848.

No. 20 of 1845.

Regular Appeal from the decision of Moulvee Syed Abdool Wahid Khan, First Grade Principal Sudder Ameen of Moorshedabad, dated the 31st July 1845.

Mr. Hudson, manager on the part of Deverinne and Co., proprietors of the Jungypore indigo concern, (Defendant,) Appellant,

versus

Mr. Mascarenhas, late of Bunsurrah Factory, (Plaintiff,) Respondent.
Rupees 537-9-7. Value of indigo.

The present case is in no way dissimilar to the foregoing cases, excepting that the ryot is Doulut Moollah, land 12 beegahs, 10 cottahs, yielding plant at 24 bundles per beegah, 300 bundles, which at 100 bundles to a vat, give vats 3.

Estimated quantity of indigo at $\frac{1}{2}$ Md. Sr. Ch.

maund per vat,	1	20	0		
Value of the same at 225 rupees per maund,.....Sa. Rs.				337	8 0
Deduct incidental charges at 15 per maund,				22	8 0
					<hr/>
				315	0 0

Co.'s Rs.,.....	336	0	0
Interest,	201	9	7
			<hr/>

Amount of suit Co.'s Rs. 537 9 7

The principal sunder ameen in this case decreed it against the factories of Messrs. Deverinne also without awarding interest; the observations made in case No. 21, as regards the factories and interest equally apply to this case. The appeal is decreed, and the decision of the principal sunder ameen reversed. The usual order will issue as regards the refund of stamp duty.

THE 23D MAY 1848.

No. 22 of 1845.

Regular Appeal from the decision of Moulvee Syed Abdool Wahid Khan, First Grade Principal Sudder Ameen of Moorshedabad, dated the 31st July 1845.

Bhowanny Persaud Rae, one of three ijaradars, of farmers of pergunnah Lushkerpore, (Defendant,) Appellant,

versus

Mr. Mascarenhas, late of Bunsurrah factory, and Ranee Soorjmonnee Debea, part proprietor of pergunnah Lushkerpore, (Plaintiffs,) Respondents.

Rupees 2,826-13-8. Value of indigo.

THE appellant in this case appealed from the decision of the principal sunder ameen, in the preceding case, which has been decided

this day, No. 21 of 1845. The appeal is decreed, and the appellant will receive back the amount of the stamp paper on which the petition of appeal is engrossed.

THE 23^D MAY 1848.

No. 1 of 1846.

Regular Appeal from the decision of Moulvee Syed Abdool Wahid Khan, First Grade Principal Sudder Ameen of Moorshedabad, dated the 31st July 1845.

Bhowannypersaud Rae, one of three farmers of pergunnah Lushkerpore, (Defendant,) Appellant,

versus

Mr. Mascarenhas, late of Bangsurrah factory, and Ranec Soorjmonce Debea, part proprietress of pergunnah Lushkerpore, (Plaintiffs,) Respondents.

Rupees 4,146-7-2. Value of indigo.

THE appellant in this case appealed from the decision of the principal sudder ameen in the preceding case, which has been decided this day, No. 19 of 1845. The appeal is decreed, and the appellant will receive back the amount of the stamp on which the petition of appeal is engrossed.

THE 25TH MAY 1848.

No. 7 of 1848.

Regular Appeal from the decision of Moulvee Syed Abdool Wahid Khan, First Grade Principal Sudder Ameen of Moorshedabad, dated the 10th March 1848.

Nabeen Chunder Banerjea, (Defendant,) Appellant,

versus

Punchanun Banerjea, guardian of Tuilokanath, minor, (Plaintiff,) Respondent.

Rupees 1,118, 10 gundahs. Price of jewels.

THE particulars of this case are fully detailed in pages 43 and 44. of the Decisions of the city court of Moorshedabad for the year 1846. The case was returned that the evidence of the three native doctors, Jeetoo, Ramtunnoo, and Koonjoo Chund, and of Pranbundoo might be taken, and that the estimated value of the ornaments might be ascertained from jewellers, who are in the habit of manufacturing ornaments of a similar description; but the principal sudder ameen has again passed judgment in plaintiff's favor without any further evidence; he was unable to procure the attendance of the three first named witnesses, and the last, Pran-

bundoo, has demised; and he says that as the ornaments are not forthcoming, there is no necessity for taking evidence as to their value. Now the weight of each ornament is distinctly mentioned in the list of the property. The value that the plaintiff has put on the ornaments may or may not be correct, but the principal sudder ameen ought not to have at once assumed that it was so without some kind of proof. I consider the investigation of the principal sudder ameen to be incomplete in its present state, and accordingly decree the appeal and reverse his decision, and remand the case for re-trial. The usual order will issue as to the value of the stamp paper on which the petition of appeal is engrossed.

THE 27TH MAY 1848.

No. 9 of 1847.

Regular Appeal from the decision of Moulvee Syed Abdool Wahid Khan, First Grade Principal Sudder Ameen of Moorshedabad, dated the 30th June 1848.

Bhugwan Shah and Ramruttun Shah, (Defendants,) Appellants,

versus

Juggobundoo Bose, (Plaintiff,) Respondent.

Rupees 4,883-8-9, for possession of land sold in satisfaction of a decree.

THE plaintiff stated that his father had two wives, viz. Musst. Koornamoi and Musst. Gourmonee; that on the 1st of Aghrun 1224, he executed a document, authorizing his wife Koornamoi to adopt a son after his demise, who, under the authority thus given her, adopted him (plaintiff) in the month of Phalgun 1231; that the two women sold a 6 annas share of the villages, Momrejpoor and Shunkarpoor, for 1,900 rupees, to Lalla Nuffur Chand; but that on the defendant, Bhugwan Shah, taking out execution of a decree given in his favor against Musst. Koornamoi and Gourmonee, for money borrowed, and having the 10 annas share put up for sale, the purchase by Lalla Nuffur Chand was rejected, and the sale of the property took place on 23d Sawun 1241, which was bought by the defendant, Ramruttun Rae, in the name of the defendant, Harra-dhun Sandeal, for rupees 430, who subsequently assigned it over by deed of sale to Ramruttun Rae, who caused a mutation of names to be made in the collector's books; that the two females sold certain portions of their rights in other villages to Upraject Shah, who instituted a suit for possession, which was thrown out on the ground that the women had no power to alienate the property; and that another suit brought by Bullubeekaunt Rae, also for possession of a share in the above-named villages, was also thrown

out for the same reasons. The plaintiff pleads that as the debt to Bhugwan Shah was incurred by Musstn. Koornamoi and Gourmonee on their own account, the sale of the property in satisfaction of his decree against Musst. Koornamoi and Gourmonee was illegal according to Hindoo law, and that he (Juggobundoo) being the late Musst. Koornamoi's adopted son, no portion of the property could be disposed of by sale to satisfy her debt; that having become of age, he sues to reverse the sale made by the civil court.

Amount of the Government revenue,	Rs. 412 15 10		
Being at three times 1,238-15-6 and mesne profits from 1241 to 1250,		8,027	7 8
Deduct Government revenue for that period at the rate of 412-15-10 per annum,	4,129	14 4	
Surunjuma, or expense of collections, ..	1,314	6 2	
		<hr/>	5,444 3 6
			<hr/>
		2,583	4 2
Interest,		1,061	5 0
		<hr/>	<hr/>
	Rs...	4,883	8 10

The defendant, Ramruttun, in answer to the suit, denied that the plaintiff was an adopted son of Musstn. Koornamoi, and pleaded that the ijazutnamah, which bears date 1st Aghrun 1214, was drawn out on plain paper, and was a forged document, and that Musst. Gourmonee had denied its authenticity; that Nattanund Mitter, who was manager on the part of the plaintiff, in answer to a question said that Musst. Koornamoi had no written authority to adopt a son; that Shumbhoo Chunder Rac, who on Rammohun's death was appointed by the Board of Revenue as manager, had never alluded to Musst. Koornamoi having any such permission; and that when the civil court gave a decree in favor of Bhugwan Shah, the plaintiff was not born.

The principal sudder ameen, after due consideration of the case, gave a decree in the plaintiff's favor, on the ground that a Hindoo widow had no power, according to the opinion of the law officer, which was called for, to dispose of any property belonging to her late husband; and that the sale of such property, in satisfaction of her own debts, was illegal.

From this decision an appeal has been preferred to this court. There is no doubt that the principal sudder ameen's judgment in this case is correct. I consider the point of law is conclusive. The ijazutnamah, or deed of permission to adopt a son, has been deposed to by two of the attesting witnesses, it is drawn out on plain paper; but at the date it bears Aghrun 1214, or November-December 1807,

stamps were not necessary for paper of this description. The fact of the plaintiff being the adopted son of Musst. Koornamoi has been satisfactorily proved in the case of Uprajeet Shah *versus* Musstn. Koornamoi and Musst. Gourmonee, and settled; and the decision upheld on special appeal. I find that it was a will, which Nettanund Mitter, when guardian on the part of the plaintiff when a minor, said that Musst. Koornamoi did not leave.

The appeal is dismissed with costs.

THE 27TH MAY 1848.

No. 16 of 1846.

Regular Appeal from the decision of Moulovee Syed Abdool Wahid Khan, first grade Principal Sudder Ameen of Moorshedabad, dated the 26th August 1844.

Neelkunth Chukerbuttee, and Ramjae Sandeal surety, (Defendants,) Appellants,
versus

Radhabullubh Mookerjea, (Plaintiff,) Respondent.

Rupees 2,983-10-15. Arrears of rent.

THE plaint sets forth that the plaintiff had a putneelease of Oddynuggur and other mehals from the landholder Koonwur Ramchand; that on the 2d Srabun 1245 B. S., the defendant, Neelkunth, took the mehals at a jumma of rupees 6,246-4-4, being 500 rupees over and above the sudder jumma amount of the previous year, on the security of the three other defendants, and entered into an engagement (kubooleut) and deed of instalment, engaging to realize from the ryots the whole of the rents for the year 1245 B. S., as also the arrears on account of the year 1244; that the sureties also at the same time executed the usual security bonds; that the defendant, Neelkunth, paid up money to the month of Bysack 1246; but that on bringing up the accounts in the month of Assar 1246, the sum of rupees 2,680-12-17 appeared to be due, as per subjoined statement:

Original jumma,	6,246	4	4
Deduct paid by defendant up to Bysack 1246, as per memoranda sent,...	Rs. 3,370	6	13
Ditto ditto as per assignment,.....	195	0	10
	<hr/>		
	3,565	7	7
	<hr/>		
	2,680	12	17
Interest,	302	13	11
	<hr/>		
Amount sued for, Rupees.....	2,983	10	8

The defendant, Neelkunth, in answer to the suit, denied having executed the documents mentioned in the plaint, or having been deputed as naib, on the conditions stated, and pleaded that he had been appointed naib of the mehals in question by Bhugwan Chunder Mookerjea, the manager of the plaintiff's affairs, simply engaging to realize the rents, and that two of the other defendants, Ramjae and Harradhun Rae, had become his securities, but that Harradhun having no property was afterwards rejected; that up to the 3d Assar 1246 he realized and paid in rupees 6,200-4-10, and obtained receipts from Bhugwan Chunder Mookerjea for rupees 5,699-15-5, in addition to which assignments were paid to others to the amount of rupees 508-5-5.

The defendant, Ramjae, in defending the suit, pleaded that the security papers were prepared but not signed, and that as Harradhun Rae was rejected, Madhub Chunder Biswas became the defendant Neelkunth's surety, that on the 5th Srabun 1246 Bhugwan Chunder Mookerjea told him that Neelkunth Chukerbuttee had absconded, owing rupees 125 only.

The former principal sudder ameen, the late Sumbhoonath Rae Bahadoor, decreed the case in the plaintiff's favor, founding his judgment on the defendant Neelkunth Chukerbuttee's engagement (kuboolat) and deed of instalment, and the security bonds entered into by the other defendants, all of which had been deposed to by the attesting witnesses. On appeal to this court the case was remanded for further investigation, the defendant Neelkunth Chukerbuttee's pleas as to payment, &c., not having been duly enquired into, and that the evidence of Bhugwan Chunder Mookerjea might be taken.

The present principal sudder ameen also decided the case, in the present instance, in the plaintiff's favor, considering that the case for the prosecution was proved on all points, that the evidence adduced by Neelkunth Chukerbuttee was unsatisfactory and unworthy of credit, that Bhugwan Chunder Mookerjea, who had demised, had no authority to grant any receipt or receive money, and that the signature purporting to be his was very dissimilar to the writing of other papers. The order directed that Neelkunth Chukerbuttee make good the amount; and that if his property was insufficient, the two sureties pay the amount of the decree, with interest, in equal proportions.

The defendants, Neelkunth Chukerbuttee and Ramjae Sandeal, being dissatisfied, have appealed to this court. The evidence against them both is most conclusive. I observe that the defendant, Neelkunth, in his reply to the suit, never mentioned the date of any of the money receipts filed in the court. Were they genuine, they would not be recognized in a court of justice unless it was fully established that Bhugwan Chunder Chukerbuttee had authority to grant them. Neither of the appellants have offered any thing calculated to affect the justness of the principal sudder ameen's decision: the same is confirmed, and the appeal dismissed with costs.

THE 28TH MAY 1848.

No. 5 of 1848.

Regular Appeal from the decision of Moulvee Syed Abdool Wahid Khan, first grade Principal Sudder Ameen of Moorshedabad, dated the 28th February 1848.

Jadub Chund Chowdhree, Ramkumul Chowdhree, Panchanund Chowdhree, and Kesub Chund Chowdhree, (Defendants,) Appellants,

versus

Ramgopaul Chowdhree, (Plaintiff,) Respondent.

Rupees 167-6-8. To resume 9 beegahs, 6 cottahs lakhiraj land.

THE plaintiff sued the defendants, Jadub Chund Chowdhree, Ramkumul Chowdhree, Panchanund Chowdhree, three brothers, Jaimonee Debea, their mother, and Kesub Chund Chowdhree, son of their late brother, Kishen Chund, to resume 9 beegahs and 6 cottahs of land in ghantee Deepchundpoor, turuf Mominpoor, which turuf the plaintiff took in the year 1241, on a putnee lease from the superior landholder, Koonwur Ramchund, also a party to the suit: the plaintiff estimated the rent at rupees 9-4-10, and sued at 18 times that amount.

The defendants, Jadub Chund, Ramkumul, Panchanund, and Kesub Chund, in defending the action, pleaded that the land in question was a portion of 23 beegahs, 13 cottahs of rent-free bromotter land (given to Brahmins) of the late Deenoo Moiter, which his daughter, Neeloo Thakoorain, subsequent to her father's demise, sold to Bhikakur Chowdhree, father of the three first named defendants and grandfather of the late Kesub Chund, on the 8th Assar 1226.

The plaintiff, in answer to the defendant's statement, urged that the defendants did not mention if the deed of sale had been registered or not, or in what manner the land had been created, or if there was any sunnud or document from the person who granted it.

The case having been referred to the collector for enquiry, that officer stated in his reply that, further than what 23 beegahs, 12 cottahs of land were mentioned in the canoongoe's papers for the year 1233 B. S., as being in the name of Neeloo Thakoorain, and in the possession of Bhikakur Chowdhree, by purchase, his office could give no information without he was furnished with the number under which the land was entered in the register of rent-free lands. As the defendants were unable to give it, and held no documentary proof of the land being exempted from payment of rent, the principal sudder ameen gave a decree in the plaintiff's favor. ●

The defendants, Jadub Chund, Ramkumul, Panchanund, and Kesub Chund, being dissatisfied, have appealed to this court; but as they are unable to bring forward any proof that the land is not liable to assessment, I dismiss the appeal with costs.

THE 30TH MAY 1848.

No. 7 of 1847.

Regular Appeal from the decision of Moulvee Mahomed Mobeen, Moonsiff of Gowas, dated 27th November 1846.

Susteedhur Acharj, Tarnee Sunker Acharj, and Benode Lall Acharj, brothers of the late Mirtoonjae Acharj, and Dasee Soondree, mother of the above, and as guardian of her minor son, Sreenath Acharj, (Plaintiffs,) Appellants,

versus

Goluk Das Halshanah and Teloke Das Halshanah, two brothers, (Defendants,) Respondents.

Rupees 297. Engagement.

THE plaintiffs stated that the defendants had money dealings with the late Panchanund Acharj, father of the male, and husband of the female plaintiffs, that on the 22d Aghrun 1243, they executed in favor of the late Mirtoonjae Acharj, the elder son and brother, a bond for the balance found to be due, viz., 148 rupees, 8 annas, the conditions of which were that the whole amount should be liquidated in the month of Cheit of the same year, and that, if it could not all be paid at once, all payments should be duly endorsed on the back of the bond, and if not so endorsed they should not be admitted. The plaintiffs accordingly sued for the amount of the

bond,	148	8	0
And interest equivalent to the principal,	148	8	0

Rupees... 297 0 0

Goluk Das, in defending the suit, denied the truth of the circumstances set forth by the plaintiffs, stating that he and his brother were not in want, and had no occasion to borrow money; asserting that he (Goluk Das) had been sent by the zemindar's agent, on the 21st Aghrun 1243, to carry a note to the principal office in Jumooah Kandhee, many miles distant, where he waited for an answer till the 23d of that month; that while there he bought at the shop of Sham Chund and Suroop, of their agent, cloth to the value of 4 rupees, 6 annas, and did not return to the village Bowalea till the 24th of Aghrun, and attributed the institution of the suit

to his having prosecuted the plaintiffs in the criminal court for damages for ill-treatment received, and to the fact of his having in his capacity of halshanah given into the landholder's office a list of lands held by the plaintiffs, who in consequence sued to raise the plaintiffs' rents; he further pleaded that so far from his borrowing money, the plaintiff Susteedhur Acharj and his mother borrowed 55 rupees of him in the Bengal year 1239, to effect the release of their friend Loknath from a debt he owed for rent due, and that he and his mother had been separated for many years.

The moonsiff, having taken evidence from both parties, considered that the evidence for the prosecution was not satisfactory, only one of the witnesses being a resident of the village in which both parties reside, and that the defendant had made out an *alibi*, and dismissed the suit.

The plaintiffs, being dissatisfied with that officer's decision, have appealed to this court. On perusing all the papers connected with the case, I observe that there were seven witnesses to the execution of the document on which the suit is brought, of whom two have been examined and three are dead: the evidence of the other two being available should, I think, be taken, more particularly as the bond is drawn out on an old sheet of stamp paper purchased two and a half years previously to the date it bears, and no books of account showing previous transactions having been filed, and that upwards of ten years have elapsed since the cause of action originated. I accordingly decree the appeal, and return the case for re-trial. The usual order will issue for the return of the amount of stamp duty.

THE 30TH MAY 1848.

No. 14 of 1847.

*Regular Appeal from the decision of Baboo Goorooopersaud Bose,
Officiating Moonsiff of Kandhee, dated the 15th December 1846.*

Rajkishore Ghose, (Defendant,) Appellant,

versus

Rookoonee Dasseah, (Plaintiff,) Respondent.

Rupees 107, 11 annas, 6 pies. Bond suit.

THE plaintiff sued Rajkissore Ghose and Brijolal Ghose, his son, to recover the sum of 56 rupees, less 11 rupees paid, being the amount of a bond executed by the former in favor of her late hus-

band Kishenchund Singh on the 15th Aghrun 1242, the total sum with interest being rupees 107, 11 annas, 6 pie.

Rajkissore Ghose only defended the suit, and stated that his father, Jai Ghose, had been in the habit of borrowing money from Kishenchund Singh and his brother Gungagovind Singh, without executing any bond for the amount; that a year or two subsequent to his father Jai Ghose's demise, Kishenchund Singh seized him, saying that Jai Ghose had died in his debt, and made him, the defendant, pay at two different times 100 rupees; that subsequent to this Kishenchund Singh again demanded payment of more money, and made out some document, but whether it was the bond on which the action was brought he did not know; that he, defendant, afterwards paid the sum of 41 rupees; that five years after Kishenchund's death, the plaintiff again demanded payment of money, on which occasion Khetternath Rae, the proprietor of the village in which he resides, said that the debt would be satisfied by payment of 25 rupees, which he, defendant, refused to pay. The bond having been filed and proved by the evidence of the attesting witnesses, the moonsiff in the absence of any proof for the defence awarded the sum of 96 rupees in the plaintiff's favor.

From this decision the defendant, Rajkissore Ghose, has appealed to this court; but as he has not offered any thing calculated to impugn the judgment of the moonsiff, I dismiss the appeal with costs.

THE 31ST MAY 1848.

No. 47 of 1848.

Regular Appeal from the decision of Baboo Gooroopersaud Bose, Moonsiff of Kandhee, dated the 19th February 1848.

Rajkishwur Banerjia, (Defendant,) Appellant,

versus

Nepal Shah, (Plaintiff,) Respondent.

Rupees 6, 4 annas. Loan.

THE plaintiff sued to recover the sum of 6 rupees said to have been borrowed by the defendant on the 12th Bysack 1252, making with interest rupees 6-4.

The defendant, in replying to the suit, denied having borrowed any money from the plaintiff, and stated that some of the braziers of the town of Jummooa Kandee wished to raise the price of their goods, but that as one, named Sreedhur, wished to undersell them, they complained against him to the landholder of the place, who

fined him, on which he prosecuted the plaintiff and many other braziers in the magistrate's court; that the plaintiff demanded of him, defendant, 6 rupees as his share of expenses incurred, which he refused to pay as the suit had not been brought against him. The moonsiff, having taken evidence from both parties, passed judgment in the plaintiff's favor.

The defendant has appealed to this court against that officer's decision. I find that the moonsiff has not called for the criminal suit to make himself acquainted with the particulars of the same, particularly as to date, whether it was instituted before or after the date of the bond. Both parties reside in the town where the moonsiff is located, and by requiring them personally to appear before him, a few questions would probably clear up the case. I decree the appeal and return the case for re-trial.

The usual order will issue as regards the return of the amount of the stamp on which the petition of appeal is engrossed.

THE 31ST MAY 1848.

No. 54 of 1848.

Regular Appeal from the decision of Baboo Dwarkanath Rae, first grade Moonsiff of Lalbaugh, dated the 25th February 1848.

Manik Gooree, (Defendant,) Appellant,

versus

Jingun Jemadar, (Plaintiff,) Respondent.

Rupees 28, 2 annas, 10 pic. Bond.

THE plaintiff sued the defendant, Manik Gooree, and his wife, to recover the sum of 22 rupees lent to them on a bond dated the 6th Phalgun 1251, being with interest thereon rupees 28-2-10.

The defendant, Manik Gooree, in defending the suit, denied having executed the document in question, and pleaded that the plaintiff was in the habit of purchasing copper coin of him and owed him on that account the sum of five rupees, and that an intimate friend of the plaintiff, named Baboo Khan, must have counselled him to institute the suit. The plaintiff, in reply to the defendant's objection, stated that on purchasing any pice he always paid in ready money.

The moonsiff, having taken evidence from both parties, considered the execution of the bond fully established, and passed a decree in the plaintiff's favor. And as the defendant, Manik Gooree, in appealing to this court against that officer's judgment, has offered nothing calculated to impugn it, I dismiss the appeal with costs.

THE 31ST MAY 1848.

No. 65 of 1848.

*Regular Appeal from the decision of Moulvee Mahomed Mobeen,
Moonsiff of Gowas, dated the 30th March 1848.*

Gourkishwur Mundul, (Defendant,) Appellant,

versus

Bence Madhub Dass and Suche Doolal Das, (Plaintiffs,)

Respondents.

Rupees 63, 10 annas, 1 pie. Balance of account.

THE plaintiff stated that the defendant and the late Goursoonder Mundul, his brother, had had mercantile dealings with him, and that on the 21st Bhadoon 1245 they executed a bond promising to liquidate the balance of rupees 34-5-10, which on casting up their account was ascertained to be due on the 4th Aghrun of the same year; that the suit was accordingly brought against Gourkishwur and against him as guardian of Goursoonder's minor son, Chubbee Lall.

The defendant appointed a pleader in the moonsiff's court on the 2d August 1847, but as no reply to the action though repeatedly called for was filed, the moonsiff decided the case *ex parte* on the 30th March 1848 in the plaintiffs' favor.

The defendant, in appealing to this court, attributes the fact of no reply to the suit having been made to neglect on the part of his pleader, and urges that, as the three witnesses to the bond are illiterate men and unable to read and write, the document has not been legally proved. Notwithstanding the *laches* on the defendant's part I admit the validity of the objection, and return the case in order that the moonsiff may take the evidence of Mohun Lall Rae, the writer of the bond, who though summoned was unable to attend from severe indisposition. The appeal is accordingly decreed.

The usual order will pass as regards the amount of stamp on which the petition of appeal is engrossed.

THE 31ST MAY 1848.

No. 43 of 1848.

*Regular Appeal from the decision of Baboo Peetumber Mookerjee,
Moonsiff of Zeeagunge, dated the 25th February 1848.*

Ishwur Chunder Sircar, (Plaintiff,) Appellant,

versus

Radhanath Shaha, (Defendant,) Respondent.

Rupees 22, 8 annas, 5 pie. Debt.

THE plaintiff sued the defendant for the sum of rupees 22-8-5, stating that on the 12th Cheit 1252, the defendant who was an

intimate friend borrowed of him 20 rupees to enable him to pay a debt, but that it was a mere verbal transaction, no bond having been drawn out.

The defendant denied the debt *in toto*, and pleaded that the plaintiff was a servant on a monthly salary of 2 rupees and had not the means of lending so large a sum, and that the suit had been instituted against him at the instigation of Ramdoolub Dutt, in consequence of his having given a man, named Kishen Koonwur Chukerbutty, advice in civil suits which the latter and Ramdoolub Dutt had respectively brought against each other.

On the part of the plaintiff three witnesses were examined, two of whom were his relations and one his washerman, all of whom spoke to the borrowing of the money. The witnesses for the defence, immediate neighbours of both parties, stated that they had never heard of any such transaction between them; and as there was no written document, the moonsiff dismissed the suit considering the evidence of the witnesses on the part of the plaintiff unsatisfactory.

An appeal has been preferred to this court, but as there is no bond, and as the witnesses on the part of the prosecution are relatives and dependants of the plaintiff, I consider their unsupported evidence is open to objection. I see no reason to disturb the judgment of the lower court, which is hereby confirmed, and I dismiss the appeal with costs.

THE 31ST MAY 1848.

No. 76 of 1847.

Regular Appeal from the decision of Sheikh Gholam Furreed, first grade Moonsiff of Hureerparrah, dated the 25th February 1847.

Radharumun Sircar, (Defendant,) Appellant,

versus

Mohubut Sheikh and Towur Sheikh, (Plaintiffs,) Respondents.

Rupees 22, 15 annas, 10 gundahs, 3 cowries. To contest a summary decree.

THE plaintiff sued to obtain the reversal of a summary decree in a suit brought against him by the defendant, Radharumun Sircar, agent on the part of Kasheenath Rae, the zemindar or proprietor of Kulleanpoor *alias* Kidderpoor, on a kubooleut dated the 5th Bysack 1250, which stated that the defendant held 37 beegahs of land in the village of Kulleanpoor subject to an annual rent of 37 rupees, which document the plaintiff denied having executed, and pleaded that the summary suit had been instituted from a vindictive motive in consequence of the plaintiff, Mohubut Sheikh, having given evidence against the defendant, Radharumun Sircar, and his master's son, Kisheunnath Rae, in a criminal suit brought against them by a

man named Azem Sheikh, in which they were punished by a fine, and secondly, in consequence of Asmut Mundul, Mohubut Sheikh's brother, having prosecuted Kishennath Rae and others had them punished in the criminal court for ill-using Mohubut Sheikh subsequent to his arrest under summary process.

Amount of suit for rent due to Assin 1251,	Rs.	15	8	0	0
Interest thereon to date of regular suit,.....	„	1	12	14	0
Costs of the present defendants awarded against the plaintiff in the summary suit,	„	4	0	0	0
Plaintiff's costs in the same,	„	1	8	0	0
Interest thereon,	„	0	2	16	3
	Rupees	22	15	10	3

The defendant neglected to defend the suit, and as on local enquiry it appeared that the plaintiffs held no such land the moonsiff gave judgment *ex parte* against both of the defendants.

From this decision the defendant, Radharumun, has appealed to this court. I observe that the moonsiff has omitted to call for the proceedings in the summary suit, as well as the proceedings in the criminal court, with all of which it was incumbent on him to make himself acquainted. Under these circumstances I consider that the investigation of the moonsiff is incomplete, and I return the case as such. The appeal is accordingly decreed, and the judgment of that officer reversed. The usual order will issue as regards the return of the amount of the stamp on which the petition of appeal is engrossed.

ZILLAH MYMENSING.

PRESENT : R. E. CUNLIFFE, Esq., JUDGE.

THE 16TH MAY 1848.

No. 11.

Appeal from the decision of C. Mackay, Esq., Principal Sudder Ameen of Zillah Mymensing, dated the 30th May 1846.

Bhyrub Chunder Chowdry, (Plaintiff,) Appellant,

versus

Taraneekeanth Lahoree, Hursoondurree Debea, and others,
(Defendants,) Respondents.

Sumboo Chunder Chowdry and others, Petitioners.

APPELLANT sued to obtain possession of 13 khadas, 13 pakees, 3 cowries, 1 krant, in mouzah Pauch Baree, and stated that by butwarrah of 8 annas of turuf Chowdry, pergunnah Jaffershahye, effected in 1224 B. S., the whole of mouzah Hat Baree fell into his father's share and of Pauch Baree a 5 annas, 6 gundahs, 2 cowries, 2 krants in 8 annas of that village, and the other 8 annas to Gunga Debea; that the lands had been frequently carried away and reformed; that disputes arose in 1237 with the respondents' ancestor, Omakanth Lahoree and others, regarding the lands situated within the boundaries stated in the plaint, and that the magistrate, having brought the matter in dispute under Regulation XV. of 1824, on proof of the lands belonging to Pauch Baree, gave possession to respondents, who on the strength of that order dispossessed him in Poos 1239, and now sues for possession and wasilat and to cancel the order of the magistrate of the 26th September 1832.

Respondents denied appellant had any right in Pauch Baree, or ever was in possession thereof; that, having been carried away by the river in 1220 and reformed in 1222, it was in possession of the former zemindar Gunga Debea, from whom it has descended to them by inheritance; and that in the case under Regulation XV. of 1824, the appellant, if he had any right in Pauch Baree, would not have claimed it as a portion of mouza Hat Baree.

The principal sudder ameen dismissed the claim on the grounds that although the butwarra papers filed by appellant shew he is entitled to 5 annas, 6 gundahs, 2 cowries, 2 krants, in Pauch Baree, it is not shewn where that village now is, and the ameen deputed to the contested spot reported that no such place as Pauch Baree exists within the boundaries laid down in the plaint, and that in the suit under Regulation XV. of 1824, appellant claimed the same lands as

belonging to Hat Baree, of which he is the sole possessor, and now claims them as his share of Pauch Baree, &c., which decision was confirmed in appeal.

Appellant having preferred a special appeal, the suit was remanded to this court, with directions in the first instance to decide whether the plaintiff is in time or not, and if within time to record more fully the reasons for decision unless the incorrectness of the plaint should be considered a sufficient ground for nonsuit. On the first point I am of opinion the suit is not barred by lapse of time. The suit under Regulation XV. of 1824 was not instituted by either party alleging dispossession, but was brought forward by orders of the magistrate on account of an affray attended with homicide having occurred, and five days less than twelve years has elapsed from the decision of the magistrate to the institution of this suit. Neither is dispossession previous to the affray proved, for in the petition filed by Omakanth Lahoree in the suit under Regulation XV. he stated that when he began to make collections from the lands in dispute, the appellant objected to it, and one of his witnesses, Sheek Munnoo, stated that previous to the disputes the lands had been cultivated by the dependents of both parties; and as the superior court has overruled my objections to the different claim now set up to that made in the suit under Regulation XV., I do not consider there are sufficient grounds for nonsuit. With respect to the land in dispute, the principal sudder ameen rejects appellant's claim, although the butwarra papers filed by him shew that he is entitled to 5 annas, 6 gundahs, 2 cowries, and 2 krants in Pauch Baree, as it is not shewn where that village now is, and the ameen deputed to the spot reported that no such place as Pauch Baree exists within the boundaries laid down in the plaint. To this report of the ameen appellant has all along objected as collusive with the respondents, who, as well as the petitioners, claim the land within the boundaries laid down in the plaint as belonging to other mouzahs, alleging that Pauch Baree was, and Hat Baree is, on the west of the Jenai, which latter is not denied by appellant, and that the former cannot be as stated by appellant on the east side of that river; but on referring to the suit under Regulation II. 1819, decided 11th February 1842, Government *versus* the present appellant, respondents, and petitioners, which was called for from the collector's office, I find that the map in that suit shews that both those mouzahs were on the east side of the river and admitted to be so in the answers of the above parties to the claim on the part of Government. Under these circumstances I consider the appellant entitled to a decree. The principal sudder ameen's decree is reversed, and it is ordered that appellant be put in possession with wasilat of a 5 annas, 6 gundahs, 2 cowries, and 2 krants share of such portion of mouzah Pauch Baree as may, in execution of the decree, be found in the possession of the respondents within the boundaries laid down in the plaint.

THE 16TH MAY 1848.

No. 8.

Appeal from the decision of Moulvee Ausuf Allee, Sudder Ameen of Zillah Mymensing, dated the 9th December 1844.

Otra Debea, wife of Juggernath Surma, deceased, and Kishen Govin Surma, heirs of the deceased, and Bhyrubee Dassca and Doorpadee Dassca, heirs of Fakcer Chunder Deo, (Plaintiffs,) Respondents,

versus

Gungadhur Roy, (Defendant with others,) Appellant.

THE circumstances of this case are detailed in the decision of the Sudder Dewanny Adawlut, dated 31st July 1847, page 386 of the Decisions recorded in English. It will therefore be sufficient to state that the decision of the sudder ameen, from which this appeal has been instituted, was grounded on the evidence to the cabala (denied by Brijmohun Doss, one of the heirs of the alleged seller,) taken in the suit for the proceeds of the lands in dispute, decided on the 2d June 1830, to which the appellant was not a party and to which he has objected in his appeal. This being contrary to the practice of the courts, the decision of the sudder ameen is reversed, and in conformity to the precedent of the Sudder Dewanny Adawlut on the special appeal of Ram Mookerjea on which orders were passed on the 6th July 1847, the suit is remanded for trial to the moonsiff of Nusseerabad, (the office of sudder ameen having been abolished and the suit being within the competency of a moonsiff,) who will cause the evidence to be taken in the presence of the appellant or his vakeel and then decide the suit on its merits. The usual order will issue in regard to stamp and costs.

THE 17TH MAY 1848.

No. 311 of 1846.

Appeal from the decision of Moulvee Ameeruddeen Mahomed, Moonsiff of Nusseerabad, dated the 26th October 1846.

Sham Bunneek and Sachoonce Bunneek, (Defendants,) Appellants,

versus

Gooroochurn Bunneek and Holladhur Bunneek, (Plaintiffs,)

Respondents.

THE respective parties to this suit had served summons on some of their witnesses, who neglected to attend, and the moonsiff without

calling upon the parties to satisfy him upon oath that the witnesses were material to the cause, passed a decision solely upon the partial admission of the respondent's claim by the appellants, rejecting part of the claim, from which decision both parties appealed; respondent in No. 312. As this procedure on the part of the moonsiff is contrary to the rule laid down in Construction 1126, the suit is remanded to the moonsiff, who will proceed as therein directed, and then decide the suit on its merits. A copy of this decision to be attached to appeal No. 312.

THE 17TH MAY 1848.

No. 312 of 1846.

Appeal from the decision of Mouljee Amceruddeen Mahomed, Moonsiff of Nusseerabad, dated the 26th October 1846.

Gooroochurn Bunneek and Hullodhur Bunneek, (Plaintiffs,) Appellants,

versus

Sham Bunneek and Shachoonnee Bunneek, (Defendants,) Respondents.

ORDERS having been passed on this appeal in the appeal of the respondents, No. 311, it is ordered, that a copy of that decision be attached to this appeal.

THE 17TH MAY 1848.

No. 299 of 1844.

Appeal from the decision of Baboo Nobin Kishen Paulit, Moonsiff of Pingwah, dated the 9th August 1844.

Tarramunnee Dibbea, wife of Gourmohun Ghuttuck, deceased, and mother of Hurree Mohun Ghuttuck, minor, (Plaintiff,) Respondent,

versus

Bydenath Deb, No. 1, Goluck Chunder Deb, No. 2, and Goureekanth Deb, No. 3, (Defendants,) Appellants.

RESPONDENT sued to make final a deed of conditional sale of 1 anna 12 gundahs of kismut Koakola and kismut Pauchbarrea in pergunnah Cagmaree, the property of the appellants and Musst. Jymunnee, deceased, to whose rights the appellants had succeeded, dated 21st Magh 1237, the foreclosure of which was effected on the

29th November 1837. Appellants, admitting execution of the deed, urge that they had let the property in dispute in farm to the respondent on advance of a sum of money, who claiming excessive interest had caused appellants (Nos. 1 and 3) to be seized and taken to her house, where they were imprisoned for three days and the deed of sale extorted from them, and that they were made to sign for appellant, No. 2, who was only ten or eleven years of age and Jymunnee, and the cabala and ikrar deposited with Kistomohun Ghuttuck, respondent's husband's uncle, until the consent of No. 2 and Jymunnee could be obtained, no money having been received by them; that they had made a complaint in the magistrate's court on the subject, and also when notice of foreclosure was served upon them, and the suit is barred by lapse of time.

The moonsiff decreed in favor of respondent, correctly citing a precedent of the Sudder Dewanny, Felix Lopes *versus* Chowdry Bheem Sing, page 45 of the Sudder Dewanny Reports, dated 11th September 1841, that the suit was not barred by lapse of time, it having been instituted within twelve years from the foreclosure having been made final, viz. 29th November 1839. He also observes that the voluntary execution of the deed at the house of appellants, and the receipt of the money by all the sellers, have been duly proved; that the junumputr filed to prove No. 2's minority is in the *alias* name of Rajnath Deb, and if really his it proves that he was at the time of the sale fourteen years, seven months, and nine days old, and not as stated by the appellants ten or eleven.

In appeal, it is urged that the extortion of the cabala has been proved by the appellant's witnesses, one of whom, Seebpershad Dhur, was a witness to it, and that the respondent's witnesses are low persons and unworthy of credit, one of them having stated that a person admitted to have been then dead was present at the execution of the deed. Of the four witnesses to the cabala two are dead, the other two were called on part of respondent, who declined taking the evidence of Seebpershad Dhur on the grounds of collusion with the appellants, and there is every reason to believe such to be the case. He states he was sent by appellant No. 2 when 1 and 3 were seized and taken to respondent's house to see about them, and found them, he says, forcibly detained, but becomes a witness to the cabala and names two other persons as witnesses to the deed whose names are not on the deed; and his evidence shews there could have been very little force employed as the appellants declined executing the cabala without receiving an ikrar, and the voluntary execution of the cabala, exclusive of the evidence of Toofanee, witness to it, and others present at the time, is corroborated by the fact that the complaint was not made in the magistrate's court for nearly four and half months after the date of deed. The appeal is accordingly dismissed and the decree of the moonsiff confirmed. Costs to be paid by appellants.

THE 18TH MAY 1841.

No. 327 of 1846.

Appeal from the decision of Moulvee Ameeruddeen Mahomed, Moon-siff of Nusseerabad, dated the 16th November 1846.

Soorjnarain Chund, after his death Goluckmunnee Dashea, on the part of Ramsoonder Chund, son of the deceased, (Plaintiff)
Appellant,

versus

Collector of Mymensing, Soorjnarain Chuckerbuttee, Luckheekanth Chuckerbuttee, Chunderkishwur Chuckerbuttee, and the wife (name unknown) of Govind Churn Chuckerbuttee, insane, (Defendants,) Respondents.

THE appellant sued to cancel a butwarra from which the collector had excluded her and admission of her share of the property into the butwarra, setting forth that Musstn. Issurree Dassea and Dyamyc Dassea were proprietors of an 8 annas share of kismut Govindbarree Degur in the kharija talook No. 333, in pergunnah Pookarea; and that Issurree Dassea had in 1230 sold to Ruheem Buksh, by deed of conditional sale, which had become final on the suit of his widow, Jhuggee Bewa, 4 annas of her share in those kismuts, and which appellant had purchased on the 5th Jyte 1248; that a suit under Regulation XV. of 1824 between the two Dasseas had been settled by a ruffanamah, in which the share of Issurree Dassea was declared to be 5 annas, 6 gundahs, 2 cowries, 2 krants; and that while the matter of the conditional sale was pending in the court, she in 1234 sold to Joogeeram Singh and Soorjnarain Chuckerbuttee 3 annas, 6 gundahs, 2 cowries, 2 krants of the same kismuts, and Jhuggee Bewa on execution of her decree obtained possession, through an ameen, on the 23d Bysak 1238, of 2 annas of the property decreed from Issurree's share and 2 annas from the possession of Joogeeram Singh and Soorjnarain Chuckerbuttee, who also took back from Issurree Dassea the price of 1 anna, 6 gundahs, 2 cowries, 2 krants, of what they had purchased from her; and that Joogeeram Singh afterwards sold his share to Luckheekant and Kalleekanth Chuckerbuttee; and that the collector having caused one-half the property, appellant purchased from Issurree Dassea, to be entered in the butwarra as belonging to those Chuckerbuttees, and the other half with other purchased portions to remain attached to the remainder of the original talook, with which it was sold for arrears of revenue, appellant is obliged to institute this suit to obtain her rights.

The collector replied that Issurree Dassea and Dyamunnee Dassea had sold 4 annas, 13 gundahs, 1 cowrie, 1 krant of these kismuts to Joogeeram Singh and Soorjnarain Chuckerbuttee, and that their names were recorded in 1228 as proprietors of equal portions,

and subsequently those of Luckeekunth and Kalleechurn Chuckerbuttee, in the place of Joogee Singh, whose share they had purchased; that the butwarra was confirmed by the commissioner on the 30th April 1844, and by Section 20, Regulation XIX of 1814, no suit can lie; that the appellant's name was recorded as a proprietor by the deputy collector on the 30th April 1845, jointly in the 8 annas, 6 gundahs, 2 cowries, 2 krant, remaining portion of the original talook, which was sold for arrears of revenue on the 21st January 1846. The other respondents assert purchase by Soorjnarain Chuckerbuttee and Joogee Singh of 4 annas, 13 gundahs, 1 cowrie, 1 krant of these kismuts from Issuree Dassea and Dyamye Dassea, and registry of their names in the collectorate records in 1228; and on sale by Joogee Singh on 13th Jyte 1239, to Luckeekunth and Kalleechurn Chuckerbuttee, none objecting on issue of the usual notice, their names were also recorded on the 9th April 1836; deny that Jhuggee Bewa received possession of any portion of her decree from them, or that they gave up to Issuree Dassea any portion of their purchase; that Jhuggee Bewa's decree is a collusive one, as she never paid any revenue for ten years; that appellant was a witness to the respondent Soorjnarain's cuballa; and that the suit is barred by lapse of time.

The moonsiff decided the suit on its merits without in the first place deciding whether the suit was barred by lapse of time or not, as required by Circular, 13th September 1843. The suit is therefore remanded to the moonsiff, who will first decide that point, and, if he is of opinion the suit is not barred, will then proceed to dispose of it on its merits. The usual order will issue in regard to stamps.

THE 19TH MAY 1848.

No. 191 of 1847.

Appeal from the decision of Moulvee Mahomed Munnaim, Moonsiff of Bazeetpore, dated the 18th May 1847.

Sheik Dowlut, (Plaintiff,) Respondent,

versus

Sheik Motecullah and Emamdee, (Defendants,) Appellants.

RESPONDENT sued for the value of dhan appellants had failed to deliver according to agreement, and obtained an *ex parte* decision from the moonsiff. Appellants state the notice and ishtihar were served at Chur Pokea, which place they had left before the suit was instituted and gone to Chur Golam Mahomed, in the Dacca district, and therefore had not an opportunity of defending the suit. On referring to the nuthec, I find only one witness deposed to the issue of the ishtihar in Chur Pokea, and he is not one of the persons named in

the peada's return as having been present; another, Waris, stated he had heard from appellants that the notice had been duly served on them. This witness has, however, filed a petition in this court, denying that he gave evidence at all in the moonsiff's court. The suit is therefore remanded to the moonsiff for re-trial; and he will also investigate the charge made by the witness, Waris, and report the result to this court. The usual order will issue in regard to stamps.

THE 19TH MAY 1848.

No. 161 of 1847.

Appeal from the decision of Modoosoodun Bundopadhya, Moonsiff of Attyah, dated the 31st March 1847.

Gowher Ullee, Johoher Ullee, Nuteeb Ullee, and Nawab Ullee, sons—
Izzutoonissa Bebee, wife, and Lutifoonissa and Hyatoonissa, daughters of Hosein Khan, (Plaintiffs,) Appellants, except Lutifoonissa,

versus

Chand Khan and Kober Khan, (Defendants,) Respondents.

APPELLANTS sued for possession and wasilat of 4 annas of kismut Barreara, and 2 annas bheel Kugean, the property of their deceased aunt, Huneefa Bebee, and also for sundry personal property as detailed in the plaint; all which they state was the property of Busarut Khan, who had given it in dower to Huneefa Bebee on their marriage. The respondents replied, they were the grandsons of Huneefa and Busarut Khan; that the former had given back her dower on the 15th Phalgun 1235 B. S. to the latter in presence of Hosein Khan; and that it had then been transferred to them by deed of gift to which the appellants' father was a witness. To this respondents replied by denying that their father was a witness to the deed, and if he had been would have written his name himself, and insinuating that the respondents had forged his signature as having been taught to write by him, they had learned his style of writing; that respondents were minors; that the return of the dower is contrary to the Mahomedan law, and if returned, how comes her name attached to it? and that Huneefa was in possession up to the time of her death. Respondents rejoined that one of them was seventeen or eighteen, and the other nineteen or twenty, when the deed of gift was executed; and that it was in the name of both Basarut Khan and Huneefa, because they lived together.

The moonsiff referred this question to the law officer:—"If a wife during the life time of her brother gives back her dower to her husband, and then, both consenting, transfer the property named in the kabinnameh by deed of gift, either before or in the absence of

the brother, to the sons of a daughter, with the condition that the givers should be supported during life and funeral ceremonies performed by the grandsons; and if the latter should be minors and are supported by the givers of the property, is such a deed of gift valid by the Mahomedan law?" To which the law officer replied that it was; and the moonsiff, being satisfied of the due execution of the deed of gift by the deposition of four witnesses to it, and papers connected with the collections of the kismuts for many years, dismissed the suit.

In appeal, it is urged that appellants' witnesses have proved possession by Hancefa and Bussarut after execution of the deed of gift, that it is necessary to give possession of a thing given, that the respondents' names have not been recorded in the collectorate, that the gift being unlimited the stamp is insufficient, and that the attestation of the deed by the cazee has not been proved. With regard to the stamp, Construction No. 836 declares that the parties may engross it on the stamp they think proper. The deed bears the attestation of the cazee, and has been proved by four witnesses to the deed and one to the attestation, and it would be unjust to attach suspicion to the document merely because the record keeper's report shews there are no cazee's registers of that pergunnah in the records until some months after the date of this deed. The appellants have produced six witnesses, three of whom are own brothers, to prove possession by Huneefa and Bussarut after the gift, who have deposed accordingly; but two of these witnesses corroborate the evidence of the respondents, for Pukie Khan saying Huneefa and Bussarut had given the property to the respondents, his deposition was stopped, and Kabil Khan said he had heard of the hibba eight or ten years before, or about the time of Bussarut Khan's death, who died in Assar 1242, when the gift was likely to be talked of. Under these circumstances I dismiss the appeal, and confirm the decision of the moonsiff. Costs to be paid by appellants.

THE 20TH MAY 1848.

No. 353 of 1847.

Appeal from the decision of Gour Hurree Bose, Moonsiff of Ghosyong, dated 14th September 1847.

Phaloo Chuckerbuttee, (Defendant,) Appellant,

versus

Jymunnee Debea, (Plaintiff,) Respondent.

RESPONDENT sued for possession and wasilat of 10 cottahs of bogooter land, of which she alleges her father, Neelkant Chuckerbuttee, had held possession up to his death on the 11th Assar 1242, that appellant had not allowed her to take possession except of a small

portion, of which also he dispossessed her in Bysack 1250. Appellant replied that Neelkant's two brothers having died without children, he, on the death of his wife, left the place, gave up possession of the land, and went to live with respondent, but previously petitioned the zemindar to grant his bogooter land to appellant, which he acceded to and gave him a sunnud of it, dated 5th Poose 1240, and that, having been in undisputed possession for more than 12 years, the suit is barred by lapse of time. The moonsiff, recording his opinion that the suit was not barred by lapse of time, as 12 years had not elapsed from the date of respondent's father's death, decreed in her favor. The moonsiff has, however, overlooked the fact that the appellant alleges possession from the time the respondent's father gave up the land in dispute, and left the place, and not from the date of his death. The suit is therefore remanded for trial, and the moonsiff will call upon the respondent to prove that she is within time, and upon appellant that the suit is barred by lapse of time, and then proceed as usual. The usual order will issue in regard to stamps.

THE 20TH MAY 1848.

No. 298 of 1847.

Appeal from the decision of Moulvee Mahomed Munnaim, Moonsiff of Bazeetpore, dated the 26th July 1847.

Nijabutoollah, (Plaintiff,) Appellant,

versus

Hosein Alli Khoondkar, Moosa *alias* Musnud Alli, Tokee *alias* Sujrut Alli, and others, (Defendants,) Respondents.

APPELLANT sued for damages, laid at 150 rupees, for the disgrace of an assault committed on him, for which several of the respondents were punished in the criminal court by the law officer. The assault arose from appellant proceeding to sell and carry off some bamboos in a baree, of which both he and respondent, Hossein Allee, claimed the proprietary right. The moonsiff dismissed the claim, stating his opinion that he did not consider any disgrace had been incurred from the mutual assault above mentioned; and for which several of the respondents had been punished in the criminal court, in which decision I concur; for I can find no precedent in the Sudder Dewanny Reports of a parallel case: there are many for value of property forcibly taken, and also where the injured party selected to sue for damages in the civil court instead of in the criminal, but none in which a party sued for damages in the civil court after having caused the opposite party to be punished in the criminal court.

The appeal is therefore dismissed and the decrec of the moonsiff confirmed. Costs to be paid by appellant.

THE 22D MAY 1848.

No. 23 of 1848.

Appeal from the decision of Kaleekinkur Rai, Moonsiff of Mudargunge, dated the 15th January 1848.

Juggernath Surma and Badoo Khan, (Defendants,) Appellants,
versus

Kishenkant Surma Chowdry, (Plaintiff,) Respondent.

RESPONDENT states he had a lakhiraj barree in Komulpore, pergunnah Mymensing, which is entered in the zemindaree sherista in the name of Beernarain and Okhyram, and that an exchange was effected on the 5th Srafun 1243 between him and appellant—respondent giving 3 cottahs and 3-4ths for an equal portion of land on the bank of the river, belonging to appellant, and a writing to that effect on plain paper being given and received by the respective parties; but 10 or 12 days after, respondent finding he had not obtained a fair exchange, the writings were returned before witnesses, and each took possession of his own land, and he let his land in Burga to Badoo Khan, without taking a cabooleut, who, colluding with appellant and not giving him his share of the crop, he sued both for it: that suit was dismissed, and he now sues for possession. Appellant, in reply, admitted that an exchange did take place in 1842; but instead of his giving 3 cottahs and 3-4ths on the bank of the river, he gave half of his burmooter barree, 2½ quarters, adjoining respondent's barree; and that he let the land received in exchange to Badoo Khan, and took a cabooleut from him in Chyte 1242; denied that the exchange was ever cancelled, also stated that the document of the exchange had been lost when his house was robbed, which was reported to the police, and that the baree is in the name of Beernarain and Gunga Harree, and two his dependants.

The moonsiff decreed the claim, not crediting appellants' assertion of the exchange in 1242, as he did not state date or month, or whether a writing of the exchange had been given to both parties, and his story of his document having been stolen is not creditable, as in his rejoinder he only says he reported the theft to the darogah, but not whether the loss of that document was mentioned; and although appellants' witnesses have deposed in his favor, they are low people, and the witnesses of respondent men of the same caste.*.

In appeal, it was urged that the date of the exchange was not mentioned as the date could not be recollected, that two of appellants' witnesses are the mundul and putwarree of the village, and another named by both parties; and that two of respondent's are his relations.

The case is remanded for further investigation, which I consider necessary. Neither party produce any documents in support of their statements, and the evidence does not preponderate on respondent's side; for although his witnesses are of the same caste, and may be

more respectable than those of appellant, two of them are his relatives. The moonsiff will therefore direct a local enquiry to be made as to whether appellant ever had possession of the $2\frac{1}{2}$ quarters of the barree he states he gave in exchange to respondent, and whether the barree is recorded in the zemindar's sherista in the names of the persons stated by respondent, or in those by appellant, and who has cultivated the land received in exchange by appellant from 1242. The usual order will issue in regard to stamps.

THE 22D MAY 1848.

No. 178 of 1847.

Appeal from the decision of Mahomed Sadee, Moonsiff of Sherepore, dated the 20th April 1847.

Goluck Chunder Pall, (Plaintiff,) Appellant,

versus

Sham Pall and Kishen Mohun Pall, (Defendants,) Respondents.

APPELLANT sued respondents for 150 rupees as damages for abusive language addressed to him. Respondents denied, and said they found appellant endeavouring to persuade a witness on their part in the suit instituted against them by appellant's brother, Soobul Pall, not to give evidence for them, and on asking him why he did so, he and ten or twelve others came and abused them. The moonsiff dismissed the suit on account of the discrepancies in the evidence for the plaintiff, one witness stating that the respondents indecently exposed their persons, another heard only two words of abuse, and the third heard no abuse. I therefore dismiss the appeal, and confirm the decision of the moonsiff. Costs to be paid by appellant.

THE 22D MAY 1848.

No. 187 of 1847.

Appeal from the decision of Degumbur Biswas, Moonsiff of Nicklee, dated the 27th April 1847.

Khooshalea Dassea, wife of Ramram Doss, deceased, after her Sutbutee Dassea, wife of Soorjnarain Bhooya, and Keswurce Dassea, wife of Jygovind Bhooya, daughters of Khooshalea Dassea, and Kishun Chunder Chowdry, (Plaintiffs,) Appellants,

versus

Gungadhur Rai and others, (Defendants,) Respondents.

APPELLANTS sued for possession with wasilat of 3 annas, 6 gundahs, 3 cowries of kismuts Bagoyte, Chorparah, &c., in tuppa

Hajradee, in talook No. 619, of which a division was made in 1212 by an ameen deputed by the collector; that her husband's share was 1 auna, 15 gundahs, of which 15 gundahs was sold to Kishen Chunder Chowdry, that Lebooram's share was 5 annas, 10 gundahs, of which annas 3-6-3 was sold in execution of a decree against his sons, Brijmohun and Gourmohun, and purchased by Gungadhur Rai on the 1st Phalgun 1248, who took possession of his separate share, but beginning to seize her ryots from the 6th Kartick 1250, she sued him under Act IV. of 1840, and obtained an order from the magistrate upholding her possession; which, on appeal, was reversed by the judge, who authorized Gungadhur Rai to have joint possession for the share of the talook he had purchased, who accordingly dispossessed her, from the 10th Bhadoon 1251, of annas 3-6-3 of her share, for which she sues with wasilat. Respondents replied that no confirmed butwara had ever taken place; that when the shares of Muddun Mohun, Brijmohun, and others, were under attachment the collector collected ijmallee from the whole talook; that in the suit instituted by the collector, one of the shareholders, Ramkant, stated the talook to be a joint undivided one; and that in that suit the alleged butwara was rejected, and also in the suit Kishenkant and others *versus* respondent, in which the moonsiff's decision was reversed by the principal sudder ameen on the 13th Assar 1253.

The moonsiff dismissed the appellants' claim, as the butwara under which she sets up her claim had been rejected by the principal sudder ameen as above. Without entering on the merits of the case I am obliged to remand the case for trial, as the moonsiff omitted to notice the objection made by the respondents that the suit had been undervalued. The suit is accordingly remanded, and the moonsiff will proceed as directed by Circular of the 13th September 1843. The usual order will issue in regard to stamp.

THE 23D MAY 1848.

No. 336 of 1847.

*Appeal from the decision of Mahomed Sadeek, Moonsiff of Sherepore,
dated the 8th September 1847.*

Kaleechurn Bhuttacharj and others, (Defendants,) Appellants,
versus

Bississer Bhuttacharj, (Plaintiff,) Respondent.

APPELLANT appealed as the moonsiff had not noticed his defence. The suit having been remanded for trial on the appeal of respondent in No. 360, this appeal is decreed; and the suit having been remanded for trial, the usual order in regard to stamps will issue.

THE 23D MAY 1848.

No. 360 of 1847.

*Appeal from the decision of Mahomed Sadeek, Moonsiff of Sherepore,
dated the 8th September 1847.*

Bississer Surma Bydiabagis, (Plaintiff,) Appellant,

versus

Ramchunder Bhuttacharj, No. 1, Kaleechurn Bhuttacharj, No. 2, Sursutee, wife of Gowreekunt Chuckerbuttee, deceased, No. 3, Sham Sikdar, No. 4, Kishna Sikdar, No. 5, Bishna Sikdar, No. 6, Seeroo Sikdar, No. 7, (Defendants,) Respondents.

APPELLANT states there is in Madubpore, pergunnah Sherepore, an hereditary burmootur undivided barree belonging to him and respondents, Nos. 1 and 2, which consists of 4 lots, the boundaries of which are detailed in the plaint—in the 1st, $2\frac{1}{2}$ cottahs, in the 2d, $3\frac{1}{2}$ cottahs, in the 3d, 7 cottahs, and in the 4th, 4 cottahs, but of the last only 2 cottahs belong to them, making a total of 15 cottahs, for one third of which he sues respondent, No. 1, having, by destroying the boundaries between the above lots and Bagruttee Deebia's beta, dispossessed him from 1241, with the exception of a tamarind tree, and includes in the suit defendants Nos. 5, 6, and 7, as ryots of No. 1, defendant No. 3 as a shareholder in the 4th lot, and her ryot No. 4, and requests that a division may be made, and possession with wasilat and interest given him. Respondent No. 1 claimed the 1st lot as within the boundary of Bagruttee Deebia's beta; and that the suit was instituted from spite as he had sued appellant for the tamarind tree in No. 127; that the claim of appellant is upset by a rufanamah written by appellant's father, in which he arbitrated between Ramchunder Chuckerbutty and Kaleekinkur, partners of Bagruttee Deebia, and that he has had possession for a length of time, and in 1214 placed defendant, No. 6's father, as a ryot on this lot. With regard to lots 2 and 3, he stated that his father, appellant, and Kaleechurn were proprietors of the busut beta of their servant, Mooktaram, 9 cottahs $1\text{--}3\text{rd}$ of which belonged to him; that he, appellant, and respondent No. 2, had 3 cottahs of Kishnoram Sikdar's barree, 1 of which belongs to him, making a total of 4 cottahs in those 2 lots, which appellant having taken into his khamarbarree, gave him in exchange his (appellant's) share of the 2 lots of $10\frac{1}{2}$ cottahs claimed by him, and of which he has been in possession from 1226; and with regard to the 4th lot, claimed by appellant, it belonged to respondents and Goureekunt, who divided it in 1228, and he and Goureekunt's heirs have been in possession ever since, and the suit is barred by

laspe of time. Respondent No. 2 replied the betas claimed belonged to appellant, and respondents Nos. 1 and 2 jointly, that appellant's father, having taken Kishnoram and Mooktaram's betas into his khamarbarree, gave the property in dispute to respondents Nos. 1 and 2, in exchange for it, and that he placed Kishnoram, a ryot, there in 1241; that in a suit under Regulation III. of 1828, it was measured, found to be in his possession, and subsequently released, and that if appellant had any claim to it, he would have brought it then.

The moonsiff, in a rather confused decision, without noticing respondent No. 2 at all, decided the suit on its merits, dismissing the appellant's claim, although respondent No. 1 alleged the suit to be barred by lapse of time; which being contrary to the rules laid down in Circular 13th September 1843, the suit is therefore remanded for trial in conformity thereto. The usual order will issue in regard to stamps.

THE 23D MAY 1848.

No. 279.

Appeal from the decision of Rajchunder Chuckerbuttee, Moonsiff of Serajgunge, dated the 23d July 1847.

Ramniddee Rai and Issurchunder Rai, (Plaintiffs,) Respondents,

versus

Arazollah Mundul, (Defendant,) Appellant.

RESPONDENTS sued for balance of an account, rupees 53-6, due for rice sold to the appellant on the 15th Kartick 1253, after deducting payment, as entered in respondents' khata. Appellant denied the transaction altogether, and objected that he can read and write, and if he had taken the rice his signature would have been affixed to respondents' khata, whom he does not know, having only lately come to Belooa. Respondents replied that living near him and seeing him in business he sold him the rice, and as to his writing knew nothing about as he had not given out he could write. The moonsiff decreed the claim, as the account is duly entered in respondents' khata, and the delivery of the rice and subsequent demand of the balance and appellant's offer to pay when he had sold the rice are duly proved by evidence. The same objections were urged in appeal, and as defendant has not alleged any cause for a false claim being made, or denied dealing in rice, or that his transactions were with any other person, I see no reason to interfere with the decision of the moonsiff. The appeal is therefore dismissed. Costs to be paid by the appellant.

THE 27TH MAY 1848.

No. 37 of 1846.

Appeal from the decision of Ameerooddeen Mahomed, Acting Sudder Ameen of Zillah Mymensing, dated the 6th November 1846.

Omurchunder Bose, (Defendant,) Appellant,

versus

Edec Begum, (Plaintiff,) Respondent.

RESPONDENT states she, Shumsheeroodeen Allee, and others, have a talook in the 5 anna, 2 cowry jowar Burmee in tuppā Rambuwul, which has been divided between them by private arrangement, and that mouzah Burmee fell into her share, and that Nasir Allee and others having dispossessed respondent and others of bheel Nuljoora, &c., belonging to that mouzah, they sued them, and a measurement having been made by orders of the court they obtained a decree in conformity to the map from the sudder ameen, dated the 30th December 1829, and afterwards possession: subsequently a suit under Regulation II. of 1819 was instituted by Government regarding that bheel, and the special deputy collector on proof of her possession as part of mouzah Burmee released it on the 27th February 1840. The appellant having purchased the nuwara mehal, talook Izzutoonnissa Begum, zillah Dowlutpoor, tuppā Isapoor, and claiming Nuljoora as belonging to his mouzah Putantek, began to interfere and petitioned for enquiry under Act IV. of 1840 in the Dacca criminal court, and got an order from the magistrate, confirmed on appeal by the judge for the land then in dispute, viz., 6 beegahs, she accordingly sues to reverse that order and for possession with wasilat of bheel Nuljoora about 33-pooras 3-15. Appellant replied that the bheel in dispute belonged to mouzah Putantek in the nuwara mehal, talook Izzutoonnissa, zillah Dacca, purchased by him for arrears of revenue, and of which he had been put in possession by an ameen deputed by the civil court; that the suit cannot be entertained in a court of this district as the property is situated in the district of Dacca; that the case under Act IV. of 1840 was only for 6 beegahs, and respondent now sues for 33 pooras; that the decree adduced by respondent as proof of the property being part of mouzah Burmee was obtained by collusion with the defendant in that suit, her own brother, Nasir Allee, for the purpose of fraudulently annexing lands belonging to the nuwara mehal to their khalsa mehal, they being then proprietors of both; that the suit under Regulation II. of 1819 was not an investigation of right, and that when possession was being given to him, other shareholders of respondent's talook endeavoured to prove nuwara lands to belong to the khalsa mehal, but that their pleas were rejected by the principal sudder ameen and judge, and at that time respondent made no objection; and that Omatuzohora, in her suit against

Lootfollah Khan in the Dacca court for a portion of talook Mahomed Ikbal Khalasa, &c., made appellant a defendant by a supplementary plaint, as he had purchased the nuwara mehal.

The sudder ameen decreed in favor of respondent, on the grounds of the map prepared in the suit decided by the sudder ameen on the 30th December 1829, in which suit the property in question was in dispute, —the appeal from that decision of Lootfollah, disposed of by the judge by the rufanameh filed by the parties,—the decree of the additional principal sudder ameen, dated 27th August 1837, in which Lootfoon-nissa Khanum, wife of Nasir Allee, sued respondent and others on the grounds that respondent had sued her husband in the suit decided on the 29th December 1830, for the purpose of injuring her dower, and observes that no proof has been produced that the ameen deputed to put the purchaser in possession of the nuwara mehal was ordered to do so by boundaries after making enquiries, which is contrary to the usual practice in such cases.

In appeal, as well as in the lower court, it is specially urged that the suit cannot be entertained in this district as the land is situated in mouzah Putantek in a nuwara mehal in zillah Dacca, which is quite irrelevant, for it is not denied that mouzah Putantek is in zillah Dacca; but the question to be decided is, whether the lands belong to that mouzah or to mouzah Burmee appertaining to this district; neither do I consider the suit liable to nonsuit because respondent sues for the whole of the bheel, while the suit under Act IV. instituted by appellant was only for 6 beegahs, for appellant therein declared his right to the whole of the bheel. With regard to the suit decided by the sudder ameen, 30th December 1829, being a collusive one for the purpose alleged by appellant, I consider there is no proof thereof, or good grounds for suspicion. Appellant alleges it was a collusive one between the respondent and her brother, Nasir Allee, but there were many other defendants, one of whom, Lootfollah, appealed from that decision, and the subject of it was again mooted on the suit of Lootfoon-nissa Khanum *versus* respondent and others. If the object of that suit was, as appellant alleges, to annex the lands of the nuwara to the khalasa mehal, by permitting the former to be sold for arrears of revenue, it is singular that no steps were taken to effect the object for such a length of time. The decree is dated 30th December 1829, and the ameen's report (date of purchase is not stated) giving possession is dated 22d January 1840. Appellant urges that respondent made no objection to the report of that ameen, although Lootfollah, proprietor of 4 aunas, 11 gundahs, 1 cowrie, 1 krant, did so, and therefore could not have been in possession; but it is more probable that she was not aware that the ameen's report had affected her interests, or with such a decree in her favour she would also have made her objections, besides which appellant has not explained why he was not made a party in the suit under Regulation II. of 1819, decided on

the 27th October 1840. It remains to be seen whether the report of the ameen shews that appellant was put in possession of the land in dispute as part of Putantek. Respondent alleges, and the map shews the boundary of mouzah Burmee to be the north side of bheel Nuljoora, under which name appellant also claims the bheel, while the south boundary of mouzah Putantek is stated in the ameen's report to be the south side of bheel Najara not Nuljoora, which also throws doubts on the proceedings of the ameen; for had he, as stated in the report, taken the evidence of the chokeedar and two of the chief ryots of Putantek, he would have ascertained the real name of the bheel, and both ameen and purchaser (the appellant) ought to have been particularly careful that the boundaries were correctly recorded. Under these circumstances I see no reason to interfere with the decision of the sudder ameen, which is confirmed and the appeal dismissed. Costs to be paid by appellant.

THE 27TH MAY 1848.

No. 17 of 1848.

*Appeal from the decision of Modonsoodun Ghose, Moonsiff of
Nittrakonah, dated the 14th January 1848.*

Mahomed Jan Khan, (Plaintiff,) Appellant,

versus

Mataboodeen Khan and seven others, (Defendants,) Respondents.

APPELLANTS sued to obtain 30 rupees on a bond for rupees 25, dated 26th Aghun 1252. Only the respondents, Chona and Khan-koorce, defended the case. The former denied executing the bond or borrowing the money, stating that a quarrel ensuing between Mataboodeen and Fukeer Dass, the latter complained against him in the criminal court, making respondent a defendant also, when nothing was proved against him, but Mataboodeen, asking for a portion of the expenses and being refused, got up this suit in collusion with his relative, the appellant. Kankoorce stated he had been made a defendant in the same case in the foudjarree, and had also refused to pay any part of the expenses, but was taken to the appellant's house, made to touch a pen, and told he had executed the bond, which he altogether denies, or receipt of the money. The moonsiff, fully detailing the evidence and pointing out the glaring discrepancies in the evidence on the part of the appellant, dismissed the claim.

In appeal, nothing more is urged than that the evidence establishes appellant's claim, which I fully concur with the moonsiff that it does not. The appeal is therefore dismissed. Costs to be paid by appellant.

THE 29TH MAY 1848.

No. 4 of 1847.

*Appeal from the decision of Ameerooddeen Mahomed, Officiating Sud-
der Ameen of Zillah Mymensing, dated the 10th December 1846.*

Gourpershad Pall Shaha, (Defendant, with others,) Appellant,
versus

Ramsing Shaha, (Plaintiff,) Respondent.

RESPONDENT sued to obtain rupees 782, 13 annas, value of 351 maunds of sursoo, and 15 rupees despatched on the 10th Kartick 1252, in charge of the defendant, Kaloo Manjee, to the care of Jygopal Chowdry at Culna, stating that appellant also went with several boats of rice, &c., and on arriving at Pubna seized and tied up his manjee, and then he and other defendants carried off his sursoo and the 15 rupees, and sold the former on the 11th or 12th Aghun at Pubna, of which he was informed by the manjee on his return, and made a complaint to the deputy magistrate of Jumalpoore, who dismissed it on account of lapse of time. Appellant replied that as they were fastening their boats one day on the way to Pubna, respondent's manjee by his carelessness brought his boat on the prow of a boat of the appellant containing 750 maunds of rice and sunk it, to which he called the attention of other mahajuns and boatmen in company; that he was about to complain in the criminal court of Pubna, which Kaloo Manjee entreated him not to do, offering to pay his losses, which were settled before respectable persons of the place at rupees 1,128-14, but the manjee being unable to pay more it was finally settled at 700 rupees, which he paid him by selling his sursoo, took a stamped receipt, and gave him an ikrar and went home, that if the property had been taken by force he would have complained to the magistrate of Pubna. The defendant Kaloo Manjee's answer is, that when in company with appellant with nine boats, and Gyanuth Shah with one, in passing a place where the current was very strong one of appellant's boats struck against a chur and sunk, on seeing which he went to a distance and came to, but not going to assist appellant he abused him and on the day they left that place said he had sunk the boat, put the boatmen of that boat on his boat, and on getting to Pubna he and his boatmen were put in different places by appellant; that appellant first took the 15 rupees and his things, and then all the sursoo and sold it, and kept the price of it, and told him not to complain as he would give him a document which would satisfy his employer, and gave him a receipt for part of the price of the sursoo, but fearing he would complain kept him and his boatmen in restraint, and only let them go when they got to Serajunge.

The sudder ameen commences his decision with: "from the evidence of the witnesses of both parties;" while in his roobakaree of the 4th December he assigns reasons, insufficient

ones, for not issuing process on the appellant's witnesses, and then proceeds to decree the sum claimed on the grounds of the receipt of appellant and copy of a deposition of Govind Jhalloo in the criminal court filed by Kaloo Manjee, and other papers of the case, against all the defendants except Kaloo Manjee, and rejects the defence set up by appellant because the ikrar is not filed, and if it was on a too small stamp he would have caused the proper stamp to be affixed or shewn that he had taken the necessary steps for that purpose, and would have named respectable persons of Pubna as witnesses, (one of the witnesses, I observe, is of that place,) that five of the nine witnesses on part of appellant are defendants, and that he has not requested them to be struck out of the list of defendants, (which would have been illegal) and that the reasons for not taking the evidence of the witnesses of the defendants is recorded in the roobakaree of the 4th December, that there is no enmity between appellant and Kaloo Manjee, and that it is improbable a small boat could sink a large one, or if it had, the loss would not have been made good without application to the courts. To this decision various objections have been stated in appeal; and the suit must be remanded for trial as the appellant was entitled to have whatever evidence he thought proper to adduce heard by the court before decision. Proof also of the defence set up by Kaloo Manjee ought also to have been called for. The suit is therefore remanded for trial by the principal sudder ameen, the office of sudder ameen having been abolished, who will take the evidence of the witnesses already named by appellant and also call upon the defendant, Kaloo Manjee, for proofs of his defence. The usual order in regard to stamps will issue.

THE 29TH MAY 1848.

No. 69 of 1848.

Appeal from the decision of Ramdoollub Doss, Officiating Moonsiff of Nusseerabad, dated the 26th February 1848.

. . Setulchunder Ghose, (Plaintiff,) Appellant,

versus

Bhowanee Gupta, mother, and Sunkuree Gupta, sister of Kaleekishwor Sein, deceased, (Defendants,) Respondents.

APPELLANT sued respondents as the heirs of Kaleekishwor Sein for rupees 299-7-8, balance due on a bond dated 11th Chyete 1252 for rupees 300, after deducting payments, one of rupees 19-8 on the 26th Assin 1253 by Ramlochun Majoomdar, endorsed on the bond, and one of rupees 21-8, not endorsed, by Rampershad khansamah. Respondent Sunkuree replied she was not her brother's heir or in possession of his property, that appellant is, and her brother was in the service of Tarramunee Chowdranee, and if appellant lent money

on her account he can sue her, and if the money was not borrowed on her account why were the payments made by her naib and kansamah? Bhawanee replied that if the payers and other omlah of Tararamunee were sent for, it would be proved that the money was borrowed on her account.

The moonsiff dismissed the claim, observing that there are six witnesses to the bond, and that the three in the lower line have evidently been added since the bond was executed; that only one of the former and two of the latter, who cannot read or write, have given evidence and cannot attest the bond or state the date of it; that the witness brought forward to recognize Kaleekishwor's writing is not worthy of credit as the *ke* of his name in the bond is very differently written from that in two other bonds filed by appellant in corroboration thereof; that appellant was unable to prove the payments, and in reply to a question said he did not consider it necessary; and that the former moonsiff's *fysala* of the 23d November 1847, filed by appellant, proves that Sunkuree Gupta is not the heir or in possession of the property of Kaleekishwor.

In appeal, it is urged that the witnesses' names on the bond are written by different people, and that he endeavoured to cause the attendance of one of them and of another witness to the bond, but could not effect it, and that people do not always write their signatures exactly alike. Fully concurring in the reasons assigned by the moonsiff for dismissing the claim, his decision is confirmed and the appeal dismissed. Costs to be paid by appellant.

THE 30TH MAY 1848.

No. 5 of 1847.

Appeal from the decision of Ameerooddeen Mahomed, Officiating Sudder Ameen of Zillah Mymensing, dated the 8th December 1846.

Dusrut Gope and Lochun Gope, (Plaintiffs,) Appellants,

versus

Jymunnee Gopenee and Raidhunee Gopenee, (Defendants,) Respondents.

APPELLANTS state their grandfather had three sons and a daughter, whose son he is, the respondents are widows of two of the sons, and appellants sued for the share of Doorgaram, who died without children, in the property inherited from his grandfather of which he had possession, but quarrels ensuing between them and respondents they made a complaint in the criminal court and were referred to the civil suit.

Respondents replied that appellants' grandfather was very poor and left no property, that at first the three sons lived together, but that Doorgaram separated from them in 1213, after which their husbands realized the property, buffaloes, &c., and bought it in their

own names as well as talooks, all of which they are in possession of and have been in undisputed possession of, and that the suit has been instituted contrary to Construction 1040. Appellants replied, denying the separation, and stating that Doorgaram being the eldest son purchased the property sometimes in his own and sometimes in his brothers' names, that the talooks have been attached and the construction referred to was irrelevant.

The sudder ameen, after detailing the points for decision, dismissed the claim without in the first instance noticing respondents' plea that the suit had been instituted contrary to Construction 1040. I therefore, in conformity with Circular 13th September 1843, remand the suit to the principal sudder ameen, the office of sudder ameen having been abolished, who will in the first place decide that point, and if he considers the Construction irrelevant will then decide the suit on its merits. The usual order in regard to stamps will issue.

ZILLAH NUDDEA.

PRESENT : J. C. BROWN, ESQ., JUDGE.

THE 9TH MAY 1848.

No. 24 of 1845.

*Regular Appeal from a decision passed by Syud Ahmud Bukhsh, late
Officiating Principal Sudder Ameen of Zillah Nuddea, on the 18th
of December 1844.*

Mrs. Helen Harris and Co., (Plaintiffs,) Appellants,

versus

Doorganund Roy and others, (Defendants,) Respondents.

THIS suit was decided in this court by Mr. Charles Udny, acting judge, on the 30th of July 1835, who dismissed the plaintiffs' claim. On an appeal being preferred to the Court of Sudder Dewanny Adawlut, his order was reversed by Mr. J. F. M. Reid, officiating judge of the superior court and returned for further investigation with the following instructions:—"That notices were to be served upon all the mozahims, or opponents, who were to be made defendants to the suit, and before them the appellant was to be called upon to exhibit proof of the claim, and the defendants (respondents) for whatever they could produce to subvert it, more particularly with reference to mouzah Kuthul Potah which the appellants claim as belonging to their zemindarry, and the respondents declare it belongs to the zemindarry of Kassheenath Banerjea and others. Substantial proof is required as to which of these statements were true, and if the respondent had any concern with the mouzah or not. This point being decided, the actual possession of the defendants of the assessed lands, and, if they were so, the average rate of the pergunnah, was to be enquired into and fixed."

The case was, under orders received from the Superior Court, transferred to the principal sudder ameen on the 31st of May 1841, to carry out the instructions of the Court above referred. By him it was referred to the collector to report upon what portion of the plaintiffs' claim was assessed and what was lakhiraj; and upon the receipt of the collector's reply, the officiating principal sudder ameen

Syud Ahmud Buksh, recorded that he concurred with the collector in his opinion that the plaintiffs had no right to a portion of the land claimed by them, and differed with him as to the rest of the land being the property of the plaintiffs.

He called for no proofs as ordered by the Superior Court, but satisfied himself with deciding on the merits of the case, by what was stated by the collector and his ameen.

The decision of the suit not having been made in conformity with the express orders of the Court of Sudder Dewanny Adawlut, cannot be considered complete or satisfactory.

IT IS THEREFORE ORDERED,

That, under the provisions of Regulation VII. of 1838, and Clause 2, Section 2, Regulation IX. of 1831, this suit be returned to the file of the principal sudder ameen with instructions to carry out the orders of the Court of Sudder Dewanny Adawlut, dated the 9th of January 1838, and then to decide the case on its merits.

THE 13TH MAY 1848.

No. 108 of 1845.

Regular Appeal from a decision passed by Baboo Ram Lochun Ghose, Principal Sudder Ameen of Zillah Nuddea, on the 25th of April 1845.

Jadub Chunder Chowdhree and four others, (Defendants,)
Appellants,

versus

Suntose Naraen Acharje and two others, (former Defendants,)
(Plaintiffs,) Respondents.

THIS suit was instituted by Suntose Naraen Acharje, against Jadub Chunder Chowdhree and four others, his co-parceners, and Rasmonnee Debea and Jymunnee Debea, the proprietors, who are now respondents, to obtain possession of a putnee talook under a deed of sale dated the 19th of June 1843, corresponding with 6th Assar 1250 B. Æ., and registered on the 23d of the same month.

The defence set up by Jadub Chunder Chowdhree and his co-parceners is that they had the talook in ijarah up to the end of 1249 B. Æ., and that on the 25th of Maugh of that year, corresponding with the 6th of February 1843, they purchased the putnee in dispute, and accordingly continue in possession. The deed under which they claim the putnee was not registered.

Rasmunnee Debea and Jymunnee Debea have acknowledged the deed in the possession of the plaintiff to be true, and deny having executed by the defendants. They also state that they gave the putnee to the plaintiffs, and deny having given it to the defendants.

The principal sudder ameen, after making every necessary investigation and examining the witnesses of both parties, gave the decree in favor of the plaintiff, on the grounds set forth in his decision, declaring the plaintiff's deed and his right to obtain possession and the sum of 200 rupees, mesne profits, proved.

The defendants, Jadub Chunder and four others, appealed on very insufficient grounds, the most cogent of which was that, if the principal sudder ameen did not consider the evidence of their witnesses sufficient to prove their deed of sale, he should have issued process for their three remaining witnesses who had not been examined.

On referring to the original record it appears that the defendants (now appellants) named eight witnesses in support of their defence, of whom five attended and gave evidence, and the subpoena was not served on the remaining three. The process was issued again for those three, and the defendants a second time failed to point them out, so that it could not be served.

On the 10th of April 1845, the principal sudder ameen asked the vakeels of both parties if they had any further proofs to file or witnesses to summon, and they respectively replied in the negative, and again on the 25th of the same month, when he decided the case, he put the same question and obtained the same answer. Under these circumstances, the objection taken to the decision on the ground of the three witnesses not having been summoned is frivolous and vexatious.

With the exception of what the principal sudder ameen has recorded about rejecting the appellants' deed because the stamp paper was purchased at Gowarree (the sudder station) instead of at Dewan-gunge, I agree with him in the view he has taken of the rights of the parties in this case, and I am of opinion that, under the provisions of Act XIX. of 1843, the plaintiff's deed must have preference to that exhibited by the defendants (appellants,) and as the latter party have not shewn any good or sufficient reason for disturbing, altering, or reversing the decree they have appealed against, there is no occasion, as provided for in Clause 3, Section 16, Regulation V. of 1831, to summon the respondents.

ORDERED,

That the appeal be dismissed, the principal sudder ameen's decree dated the 25th of April 1845, be confirmed, that this be intimated to him in order that he may carry out the same, and the appellants called upon to pay the amount decreed, with costs, and interest up to day of payment.

THE 16TH MAY 1848.

No. 109 of 1845.

Regular Appeal from a decision passed by Baboo Ram Lochun Ghose Rai Bahadoor, Principal Sudder Ameen of Zillah Nuddea, on the 24th of April 1845.

Surroop Chunder Sircar Chowdhree, and after his decease Bindrabun, Sircar Chowdhree, and Srush Chunder Sircar Chowdhree, (Plaintiffs,) Appellants,

versus

Bydenath Coondoo, Helen Harris, and two others, (Defendants,) Respondents.

THE plaintiff in this case prosecuted to obtain possession of certain premises he alleged were mortgaged to him on the 9th of Assin 1241 B. *Æ*. (corresponding with the 24th of September 1834) for the sum of Sicca rupees 1,000, which money was to be repaid to him on or before the 30th day of Assin 1248 B. *Æ*., corresponding with the 15th of October 1841, together with interest at the rate of twelve per cent. per annum.

As the money was not repaid according to the terms of the said mortgage bond (kutkabaleh,) the plaintiff (mortgagee) instituted a summary suit in the civil court under the provisions of Regulation XVII. of 1806, to foreclose the mortgage, on the 28th of Poose 1248, corresponding with the 10th of January 1842. The notice dated the 15th of January 1842, corresponding with 3d of Magh 1248, was not served on the defendants till the 6th of March, corresponding with 24th Phalgun 1248. The defendants took no notice of the suit pending against them till the 5th of January 1843, corresponding with 22d of Poose 1249 B. *Æ*., when they presented a petition stating that on the 7th of Phalgun 1248 B. *Æ*., corresponding with 17th of February 1842, they had sold their property, claimed by the plaintiff in mortgage, to Mr. Francis Harris for 2,200 rupees, and denied the plaintiff's claim.

The principal sudder ameen has for seven reasons detailed in his decree considered the plaintiff's claim not proved, and has accordingly dismissed it. The first four and the seventh are not in themselves sufficiently cogent, in my opinion, to lead to a dismissal, but the fifth and sixth are greatly against the plaintiff's claim. It appears that out of the plaintiff's witnesses one man has given evidence in his favor on four separate occasions, another twice, and a third once, which is a suspicious circumstance and lead a person to suspect the rectitude of their conduct. Again, from the evidence of Ramdhun Chungo, Ketabdee Sheikh, Sudduroodeen Sheikh, and Nepal Sheikh, it is on record that about the end of 1247 B. *Æ*., or shortly before the plaintiff instituted his claim under Regulation XVII. of 1806, he

had been endeavouring to purchase the defendants' house for 1,500 rupees, but the defendants got a better price from Mr. Harris.

If the plaintiff's mortgage was really in existence, there was no occasion for him to purchase the house for a larger sum than what was mentioned in the mortgage bond. ●

I entertain great doubts of the genuineness of the mortgage claimed by the plaintiff. Surroop Chunder Sircar Chowdhree did not bear the best character for honesty in his dealings, and nothing was easier for him than to draw up a mortgage deed and have it witnessed by persons who had it appears previously given evidence in his favor. Had his character been unimpeachable, and his witnesses credible, I should have felt inclined to reverse the principal sudder ameen's decree, as I consider the defendant was not justified in disposing of the house, &c., to Mr. Harris after a claim of mortgage had been instituted by the plaintiff, nor were they justified in causing their deed of sale in favor of Mr. Francis Harris to be registered after a notice had been served upon them, and before the suit instituted in court had been decided one way or another. It was in fact alienating property, for which a claim was instituted according to law.

The point of the validity of Mr. Harris's purchase is not before the court, so that no further notice need be taken of it.

With regard to the genuineness of the appellants' deed of mortgage (kutkabaleh,) I entertain great doubts as above expressed, and under these circumstances I must reject the appeal.

IT IS THEREFORE ORDERED,

That the principal sudder ameen's order of dismissal of the plaintiffs' claim is confirmed, and the appeal dismissed with costs, together with interest to day of payment on any costs decreed to the respondents by the principal sudder ameen from the date of that order. Mrs. Helen Harris, having appeared by vakeel in this court without being summoned, must bear her own costs incurred in this court.

THE 17TH MAY 1848.

No. 123 of 1845.

Regular Appeal from a decision passed by Baboo Ram Lochun Ghose Rai Bahadoor, Principal Sudder Ameen of Zillah Nuddea, on the 9th of July 1845.

Nubbeen Chunder Bose, (Plaintiff,) Appellant,

versus

Hurree Purshad Bhuttacharj and two others, (Defendants,) Respondents.

THE plaintiff sued on a bond executed by the three defendants for Company's rupees 956. The defendants denied having executed

the bond or borrowed the money, and stated that on the day the bond is dated they were elsewhere.

The principal sudder ameen has rejected the evidence of four of the plaintiff's witnesses on the grounds that they are common low people, and do not know how to read or write. Two others who can read and write he has rejected as not appearing to be the credible witnesses contemplated by Section 15, Regulation III. of 1793, but on what proof he has declared them to be unworthy of credit, is not stated. He has given as a second reason for dismissing the plaintiff's claim, that there was no ostensible occasion for Hurree Purshad Bhuttacharj, being mixed up in the obligation with the other defendants, but he has not made any investigation into the matter. He has also recorded as a reason for rejecting the plaintiff's claim, that the parties were not on terms of intimacy, and were in fact strangers to each other, and that it was therefore most improbable that the plaintiff should have advanced so large a sum to parties with whom he was not acquainted, without sufficient security, but he has not required any proof from the plaintiff that he was on terms of intimacy with them, as he has stated he was. Further, he has not called upon the plaintiff to produce his account books in support of his claim, which was a necessary precaution before dismissing his suit.

The dismissal of the plaintiff's suit without full and searching enquiry, being at variance with justice and contrary to all precedents, and the rejection of four of the plaintiff's witnesses' evidence on the ground of their being ignorant of reading and writing being opposed to a decision passed by the Court of Sudder Dewanny Adawlut, on the 31st of August 1847, on a petition for the admission of a special appeal from a decision of the first principal sudder ameen of zillah Jessore, under date the 24th June 1846, reversing that of the moonsiff of Singa, under date the 17th of March 1846, in the case of Gopce Sirdar, plaintiff, *versus* Turrickoollah Sirdar, defendant, (*vide* page 488 of the printed Decisions of the Court recorded in English during 1847,) I admit this appeal, and, in remanding the proceedings under the provisions of Act VII. of 1838, desire that the principal sudder ameen, with reference to what the plaintiff has stated this day in reply to the questions put to him, and the above remarks, call for further proofs from the plaintiff and the defendants if he consider it necessary, and then re-consider his judgment, and do not reject the evidence of witnesses merely because they cannot read and write. The amount of the stamp paper for instituting the appeal is to be returned to the appellant, and the respondents having appeared by vakeel without being summoned, there is no occasion to pass any orders regarding their costs.

THE 19TH MAY 1848.

No. 155 of 1845.

*Regular Appeal from a decision passed by Baboo Ram Lochun Ghose
Rui Bahadoor, Principal Sudder Ameen of Zillah Nuddea, on the
9th of July 1845.*

Allum Khan, (Defendant,) Appellant,

versus

Pran Kishen Rai, Pauper, (Plaintiff,) Respondent.

THIS appeal is not from the order of a decree passed by the principal sudder ameen, but to counteract any injurious effect his remarks made in his regular file, No. 160 of 1843, might have with regard to a deed of sale executed in the appellant's favor by the respondent's father. My opinion of those remarks are recorded in my decision passed this day, in a regular appeal preferred by the respondent, No. 156 of 1846, and there is no occasion to record any thing more here regarding them, than that they were gratuitous and uncalled for, as the genuineness of the appellant's deed was not investigated nor in question.

There was no occasion for this appeal, but having been made it must be disposed of. The respondent is, however, only nominally so; there is no occasion therefore to summon him.

The appellant being entitled to have an order in his favor, to do away with any injury the principal sudder ameen's remarks might cause him,

IT IS ORDERED,

That the appeal is decreed, but under the peculiar circumstances of the case the appellant must pay his own costs.

The principal sudder ameen is admonished that, under the circumstances of the suit he disposed of, in which Pran Kishen Rai, (pauper,) was plaintiff, and did not prove his suit, and in which the validity or genuineness of the appellant's deed of sale was not investigated, he ought not to have passed any opinion which might hereafter prove injurious to the appellant's rights.

THE 19TH MAY 1848.

No. 156 of 1845.

Regular Appeal from a decision passed by Baboo Ram Lochun Ghose Rai Bahadur, Principal Sudder Ameen of Zillah Nuddea, on the 9th July 1845.

Frankishun Rai, Pauper, (Plaintiff,) Appellant,

versus

Chundur Coomar Pal Chowdhree, Allum Khan, and others,
(Defendants,) Respondents.

THE plaintiff (appellant) sued as a pauper for the re-possession of certain jumma lands, which he stated were in the occupancy of his father for a long series of years, and from which Golab Khan and Allum Khan, who were the cultivators of it, forcibly dispossessed him (the plaintiff's father,) in 1241 B. \mathcal{A} .; that his father complained to the zemindar, who promised to have him reinstated, but did not do so, and that his father was about to prosecute the parties in court when he died in the month of Assar 1247 B. \mathcal{A} .

The defendants, Golab Khan and Allum Khan, denied having forcibly or by any stratagem got possession of the jumma claimed by the plaintiff; they state that they purchased the right to it on the 25th of Cheyt 1240 B. \mathcal{A} ., and remained in quiet and undisturbed possession during the plaintiff's father's life time, a period of seven years, and that in Assin 1241, they applied to the zemindar and obtained an umuldustuck. This statement is corroborated by the zemindar, who states that he gave a pottah for the land to Golab and Allum Khan, with the concurrence of the plaintiff's father, on the 16th of Assin 1241 B. \mathcal{A} ., and that they have paid the rent regularly since.

The principal sudder ameen has stated in his decree that four points have to be decided in this case. First, whether the jumma claimed by the plaintiff was, as he stated, hereditary or not. Second, if the zemindar, i. e. proprietor of the soil, transferred the putnee tenure to another party, had the plaintiff any right to institute his suit to reverse it? Third, if the name of Tiloke Chunder Rai (the plaintiff's father) was recorded in the zemindar's serishtah, as having any proprietary right in the jumma at the time of his death. Fourth, if the deed of sale, under which Allum Khan claimed the jumma, is genuine or not.

The principal sudder ameen decided that with regard to the first point the zemindar had denied that the jumma was hereditary, and the plaintiff has given no proof to the contrary in support of his claim. It is not proved that the plaintiff's father was forcibly disposses-

sed, but it has been shewn, and not contradicted, that the right of occupancy was transferred to Allum and Golam Khan with his knowledge and sanction. Secondly, that it is clear even from the plaintiff's own statement that his father was not in possession for about seven years prior to his decease, and did not take any steps to regain possession; that plaintiff's claim therefore is now inadmissible.

I agree with the view taken by the principal sudder ameen regarding the plaintiff's case, and am of opinion that the appeal instituted by the appellant (plaintiff) is vexatious and the reasons frivolous, as he has not advanced any thing to shew that the grounds for the dismissal of his suit, as stated by the principal sudder ameen were erroneous. Under these circumstances there is no occasion, as provided for in Clause 3, Section 16, Regulation V. 1831, to summon the respondents.

One of the respondents, however, has appealed from the decree passed by the principal sudder ameen, (No. 155 of 1845,) not objecting to the final order, but to the remarks he has made on the deed of sale executed in his favor by Tiloke Chunder Rai, fearing those remarks, if allowed to stand, may injure his rights at some future period. I am of opinion that the principal sudder ameen having decided and declared that the plaintiff had not proved his claim, and that for the reasons stated it was inadmissible, he should have satisfied himself with merely dismissing the suit, and that the notice he has taken of the defendants' deed of sale in the concluding part of his opinion was gratuitous and uncalled for, and that his remarks cannot in any way injure the defendant's rights, as no investigation regarding them has been entered into.

ORDERED,

That the principal sudder ameen's decree, dated the 9th of July 1845, as far as relates to the plaintiff's (appellant's) claim is confirmed, and the appeal is dismissed. The appellant is to make good all the costs of the suit, as stated in the principal sudder ameen's decree, with interest to day of payment, and is also to pay all the costs of this appeal.

THE 26TH MAY 1848.

No. 39 of 1848.

Regular Appeal from a decision passed by Baboo Sumbheo Chunder Chatterjee, Moonsiff of Santipore, on the 22d of March 1848.

Gopal Ruffoogur, (Defendant,) Appellant,

versus

Nulloo Mundul, (Plaintiff,) Respondent.

THE plaintiff (respondent) prosecuted the defendant for rent of a house, at the rate of 1 rupee per mensem for thirteen months.

He set forth in his plaint that he had purchased the premises in the first instance from the defendant, and had a regular deed of sale in his favor by the defendant, and that after the purchase was completed the defendant applied to him to rent the house, when a regular written agreement was executed by him.

The defendant denied having sold the premises to the plaintiff, as well as having entered into any engagement for the payment of 1 rupee per mensem in favour of the plaintiff, and stated that he could prove that he was in Calcutta on the day on which the agreement was said to be executed.

The moonsiff took the evidence of witnesses in support of the agreement to pay rent, and having declared that the signature resembled the defendant's signature on his vakalutnamah, decreed the suit against him without waiting for the defendant to prove what he had stated.

I am of opinion that the grounds upon which the moonsiff has given a decree in favor of the plaintiff are entirely insufficient. The plaintiff grounded his claim upon his having purchased the premises from the defendant, and having received rent from him for about eight years prior to the period for which the suit was instituted.

The defendant denied having sold the property to the plaintiff or having ever paid any rent. The plaintiff should therefore have been nonsuited, and allowed if he chose to prove his purchase and the receipt by him of rent from the defendant for the time prior to the thirteen months for which he has prosecuted.

The signature on the agreement to pay rent, which the plaintiff alleges to be that of the defendant, does not on comparison with the defendant's signature on the vakalutnamah bear any similitude to it, and if it did it would be no proof that it was written by the defendant.

I do not consider the evidence adduced by the respondent in support of his claim sufficient under all the circumstances elicited. The witnesses are all residents of Santipore, which is a place notorious for the little dependance to be placed on the veracity of its inhabitants. The purchase of the premises, as well as former payment of rent, was contested by the defendant. The plaintiff should therefore have proved both before he got a decree in his favor for the rent which is the matter of this suit. As the moonsiff was of opinion that the plaintiff's claim was good, he should have given the defendant time to produce proof of the assertions made by him in his answer to the plaint. The moonsiff has given as one of the grounds for his decision that the signature of the defendant on the vakalutnamah filed in the suit, resembled that on the agreement or kabooleut to pay rent. The two signatures do not resemble each other at all, and even if they did it has been ruled by the Court of Sudder Dewanny Adawlut, on the 7th of April 1847, that resemblance of hand-writing is not admitted as conclusive.

Considering under these circumstances that the decision of the moonsiff of Santipore is contrary to law and precedent, and that it has been passed upon insufficient grounds, I reverse it, and order that the case be remanded to his file, to dispose of with regard to the above remarks,

The stamp paper fee for this appeal to be returned to the appellant, who must for the present bear any expense he may have incurred in making this appeal, and when the case is finally disposed of it will be decided who is to bear the costs.

THE 30TH MAY 1848.

No. 3 of 1848.

Regular Appeal from a decision passed by Baboo Inkkheenaracen Mitter, Moonsiff stationed at Kaghuzpookoorea, Zillah Nuldea, on the 30th of December 1847.

Gourchunder Mookherjea, (Defendant,) Appellant,

versus

Bukhtawur Mundul, (Plaintiff,) Respondent.

THIS suit was preferred by Bukhtawur Mundul to set aside an award against him, by the assistant collector, under the provisions of Regulation VII. of 1799, for the rent of two beegahs of birt land, which he stated, he held from Oomakunt Chuckerbuttee, and others, and for the rent of which land stating it to be 2 beegahs and 6 biswas, Gourchunder Mookherjea prosecuted him, and a summary decree passed in his favor.

The reply of the defendant (appellant) was that he had purchased the land in the plaintiff's occupancy from Ramchunder Chuckerbuttee, the father of Oomakunt Chuckerbuttee, and the father of the plaintiff (respondent) had taken a three years' lease of the land from him in 1241 B. Æ.; that on the expiration of that lease he (the defendant) kept the land in his own cultivation for one year, and on the 15th of Phalgun 1245 B. Æ. the plaintiff took a lease of the same land from him (the defendant) for eight years at the rate of 2 rupees, 8 annas, which rent he regularly paid up to 1250 B. Æ.; and that in consequence of his not paying for 1251 B. Æ. he (the defendant) brought his suit under Regulation VII. of 1799, which was decreed in his favor.

When this suit was instituted in the moonsiff's court he directed local investigation on certain points to be made by the ameen attached to his office, which he ought to have made himself, as the decision of the suit rested (he recorded) on those points bring proved or not.

What is recorded regarding the unsatisfactory investigation made by the assistant collector, was all right; but he has, I think, accredited the pottah filed by the plaintiff, and discarded the proof exhibited by the defendant, without due investigation. The defendant stated that he had purchased the lands, measuring 2 beegahs and 6 cottahs, from the father of the party, from whom, the plaintiff says, he received a pottah in which no limitation of time is fixed. The point therefore to be first ascertained was, if the party from whom, the plaintiff says, he received his pottah, was rightful owner of the land, or if the defendant's allegation of having purchased the land from the father of Oomakunt Mookherjea, was true or otherwise.

This point being settled, the moonsiff ought to have gone himself to the spot, and made any local enquiries himself.

The ameen should never be employed to make local investigations or to furnish a report upon any points which affect the decision of a case. If, for any reasons, which should be clearly stated, it is necessary to take the evidence of witnesses who cannot appear in court, the ameen should have the questions which are to be put to such witnesses given him, and he should restrict himself to recording the answers, and make his return without expressing any opinion either as to what is proved or what is not. That must be decided by the court. In the same way in making local investigations he should restrict himself to them alone, and not give an opinion one way or another. In this case the ameen has given his opinion as to what has been proved and what has not, which is highly improper.

Not being satisfied with the investigation the moonsiff has made in this case, and considering it incomplete, it is necessary to return it to him to decide whether the party from whom the plaintiff (respondent) states he received his pottah, or if the defendant (appellant) was and is the rightful owner of the land, and, if he considers any local investigation is necessary, to proceed himself to the spot and make it.

He has credited the evidence of the witnesses called by the plaintiff without any good recorded grounds, and his reasons for rejecting the evidence of the defendants' witnesses are insufficient and unsatisfactory.

• IT IS THEREFORE ORDERED,

That this suit be returned to its original place on the moonsiff's file and that with reference to the above remarks he re-investigate it. The value of the stamp paper for making the appeal, to be returned to the appellant, and both parties are to bear their own costs at present, and when the suit is finally disposed of it will be decided who is to bear them.

ZILLAH PATNA.

PRESENT: R. J. LOUGHNAN, Esq., JUDGE.

THE 8TH MAY 1848.

No. 5 of 1845.

Appeal from the decision of Moulvee Mahomed Rafiq, Additional Principal Sudder Ameen, dated 12th December 1844.

Ramoo Roy, (Defendant,) Appellant,

versus

Gopee Chund and others, (Plaintiffs,) Respondents.

SUIT to recover an auction sale, laid at rupees 1,422-15-0.

The plaintiffs in their plaint stated that Gopee Chund and Phool Kooer, not having the means of defraying the expences of the suit, Hurk Lall, by an agreement, (ikrarnamah,) dated 21st August 1843, purchased the half share of their rights in the estate of which the sale was sought to be reversed, for the sum of Company's rupees 300, and therefore sued jointly with them for the reversal. The principal sudder ameen, though deciding the case on its merits, and decreeing the reversal of the sale, excluded Hurk Lall from the benefit of the decree.

In appealing from this decision, the defendant pleaded among other things, that the suit was inadmissible, on the ground of the transaction above detailed between the plaintiffs, which he described as an act of champerty, or encouragement of litigation. This plea not having been noticed in the decision of this court, passed by a former judge on the 19th April 1847, constituted the ground on which, upon a special appeal to the Sudder Dewanny Adawlut, the case has now been remanded for re-trial.

The appellant cited as precedents in support of their plea abovementioned, decisions both of the provincial courts and of the Sudder Dewanny Adawlut. That of the Sudder Dewanny Adawlut of the 28th July 1846, in the case of Lootfoonnissa and others, appellants, *versus* Meheroonnissa and others, respondents, a case exactly in point, must rule the decision in the present case.

The principal plea of respondents, in reply, is of no avail. It is that after appealing from the principal sudder ameen's decision, on the ground of the exclusion of Hurk Lall, he being unable to command funds to pay the expences of a special appeal, the trans-

action was cancelled, by the payment back of his purchase money and the re-transfer of the share of the other plaintiffs' rights made over to him.

As the question is whether the suit should have been entertained or not, its decision cannot evidently be affected by any thing that may have taken place after the entertainment and decision of the suit, and the decision in the precedent above quoted was conformable to this opinion; for Kazee Uzmutoola, while the appeal was pending, had relinquished, as stated in his petition to the court, all claim to the purchase of one half of Meheroonnissa's rights in the property disputed.

Conformable to the precedent above quoted, therefore the appeal is decreed with costs, and a nonsuit is directed to pass against the plaintiffs. Moreover, the respondents, Mahadeo Lall and Moost. Phool Kooer, having executed the decree of the lower court, while the special appeal was pending, and obtained possession of the lands, the sale of which had been reversed, must deliver up possession with the mesne profits which they have derived from them while the case was pending. It is therefore ordered, in the spirit of Section 7 of the Circular Order of the Sudder Dewanny Adawlut, of the 11th January 1839, that the appellant obtain possession of the estates and payment of the mesne profits from Mahadeo Lall and Phool Kooer, respondents. These respondents will be liable moreover for the refund of the costs paid to them under the said decree.

A question was raised *vid voce* by the respondent, Hurk Lall, as to his liability to pay the costs of the appeal in this case, on the ground that no decision was passed in his favor by the lower court. But as the appellants have been put to the cost of an appeal by the consequence of an act to which he was a party, viz. the preferring of a suit not cognizable in the courts, under the circumstances of its being preferred, I think he was properly included among the respondents, and cannot be exempted from the payment of indemnification to the party improperly sued.

THE 11TH MAY 1848.

No. 2 of 1847.

Appeal from the decision of Mr. E. DaCosta, Principal Sudder Ameen of City Patna, dated 26th May 1847.

Raikoomar Singh and others (Plaintiffs,) Appellants,

versus

Ramsurn Singh, (Defendant,) Respondent.

SUIT to reverse a summary proceeding of the principal sudder ameen, dated 25th April 1845, and one of the judges confirming it, dated 15th September of the same year, laid at rupees 1,315-9-6.

In the course of execution of a decree obtained against Oodit Narayen, Surn Singh, respondent in this case, applied to the principal sudder ameen for realization from the appellants of a sum of money alleged to be due by them under the terms of a kubooleut to Oodit Narayen : on notice issuing to them, they made various objections to the demand and prayed to be released from it. The principal sudder ameen, while he over-ruled or disallowed the objections, ordered that the kubooleut held by Oodit Narayen should be sold in execution and the demand be discontinued. This summary decision was upheld in appeal in the court of the city judge, and this suit was brought to reverse both decisions on the following grounds—that the objections having been over-ruled in the summary order could not now be entertained without a reversal of it, that as had been urged among the said objections the plaintiffs did not hold the lands for which rent was demanded as leaseholders (theekadars) but as holders of a bill of conditional sale, that they had not only paid Oodit Narayen the annual sum stipulated in the agreement, (kubooleut,) viz. 99 rupees per annum but had large claims against him partly under the terms of the lease, or pottah, and partly in consequence of the resumption and assessment of some of the lands particularized in it as rent-free, during the period of the lease.

The principal sudder ameen dismissed this suit, with costs, for the reasons assigned in his decree in the suit No. 28, which reasons cannot be considered sufficient, for the points at issue in that case were not precisely the same.

It was decided in that decree, only that the defendants (plaintiffs in the present case,) though holding the lands under the bill of conditional sale were still liable to pay the annual sum of 99 rupees, stipulated in the kubooleut, to the purchasers of that document, the payment to Oodit Narayen not having been proved.

In this case, however, the first question is, whether, assuming the facts to be as they are stated in the plaint, the orders of the principal sudder ameen contained in his proceeding of 25th April 1845, and those of the judge confirming those orders, involved any substantial injustice, whether the rights of the plaintiffs had sustained or were likely to sustain any injury or prejudice in consequence of them. Though this is contended for in the plaint, I cannot see in what respect it was or could be the case. The object of the petition of objections was to shew that the demand could not be properly made, but the institution of the suit No. 28, by the opposite party, shews that the effect of the order sought to be reversed was to leave the questions involved in the objections most properly to the issue of a regular trial. The order was therefore, in my opinion, perfectly just and proper, and there was no ground for a suit to have it reversed.

The dismissal of the suit, with costs, I therefore consider just, under the circumstances, though not exactly for the reasons assigned by the principal sudder ameen. I accordingly dismiss the appeal, and, confirming the decision of the lower court, direct that intimation be given through the principal sudder ameen to the respondent of this decision. .

THE 12TH MAY 1848.

No. 3.

Appeal from the decision of Mr. E. DaCosta, Principal Sudder Ameen of the City of Patna, passed on the 26th January 1847.

Rajkoomar Singh, and others, (Defendants,) Appellants,
versus

Ram Surn Singh, (Plaintiff,) Respondent.

SUIT to recover amount of rent due under a kubooleut, laid at 1,397-13-11.

This suit was instituted to enforce payment of the annual sum of 99 rupees rent, stipulated under an agreement (kubooleut) to be paid to Oodit Narayen, against whom plaintiff had taken out execution of a decree and purchased the said kubooleut at auction. The appellants pleaded, first, their non-liability to pay the amount, on the ground that they were in possession of the lands mentioned in the kubooleut upon the title of a bill of conditional sale, secondly, the actual payment of the money to Oodit Narayen. The principal sudder ameen, deciding that they were liable, and that the proof offered by them of the payment had failed, decreed the suit for the plaintiff with costs.

This decree, on a consideration of the pleadings, the reasons assigned by the principal sudder ameen, and the facts of the case, is, in my opinion, perfectly just and proper.

In the appeal, the reasons in the appeal of the same parties, No. 2, from the decision of the principal sudder ameen in suit No. 54, are referred to. These reasons comprise the following pleas not stated in the answer to the plaint, *first*, "that Oodit Narayen in the deed of lease, pottah," corresponding to the kubooleut made himself liable for the payment of the balances of rent, which might be due from the cultivators on the expiration of the period of the lease, which balances the appellants had shewn by a wasil-bakee and the testimony of witnesses to amount to upwards of 1,283 rupees; *secondly*, that certain of the lands had been subjected to assessment during the progress of the lease for which Oodit Narayen was liable to pay them a further sum of 532 rupees odd; and that even supposing the annual sum of 99 rupees not to have been actually

paid, the appellants are entitled to have these two items credited as a set-off against it.

As there is no reason assigned why these pleas were not urged on the trial of the suit, they cannot now be entertained.

I therefore dismiss the appeal, and confirm the decree of the principal sudder ameen, directing that this decision be communicated to the respondent through the lower court.

THE 12TH MAY 1848.

No. 4.

Appeal from the decision of Mr. E. DaCosta, Principal Sudder Ameen, dated the 19th January 1847.

Dabee Dutt, (Defendant,) Appellant,

versus

Beebee Bholun, and after her demise, Moulvee Syud Kamal Ali and others, (Plaintiffs,) Respondents.

SUIT for rent, laid at rupees 606-0-5.

Appellant on the trial of the suit denied the execution of the agreement on which it is founded. The principal sudder ameen, finding this point established by the evidence of subscribing witnesses, and also deeming it proved that defendant (appellant) had obtained possession of the farm and made collections from the ryots, decreed the claim with costs against him.

In appealing against this decree, appellant contends, *first*, that he is not correctly named in the deed as Dabee Singh, though his name is correctly written Dabee Dutt in the signature, which, however, is not his, and which was preceded originally by the word gowah, changed afterwards to saheeh; *secondly*, that the petition for sale of distrained property relied on by the principal sudder ameen as proof of appellant's possession was not his, it purported to have been presented by a man named Heera Lall, who was not alive at the date of it, as was proved by a faisula of the moonsiff of the Western Division, of which fact the principal sudder ameen took no cognizance. I do not think either of these pleas of any weight. It appears consonant to the custom of the country to find the same person styled in one place Dabee Singh, in another Dabee Dutt; and the alteration of the word preceding the signature is not conclusive of any thing; the writer might very well have commenced with the wrong word and altered it at the time. With regard to Heera Lall being dead at the date of the petition, I do not find, on referring to the moonsiff's decision, that the Heera Lall therein stated to be dead, is proved to be identical with the Heera Lall by whom the petition purports to have been presented.

I find nothing which can form a ground for interference with the decision of the principal sudder ameen, which moreover appears to be in every respect just and proper. I therefore confirm it and dismiss the appeal, directing that the respondent be informed of this decision through the lower court.

THE 16TH MAY 1848.

No. 68 of 1847.

*Appeal from the decision of the Moonsiff of the Western Division,
Sujjad Alli Khan, dated 22d February 1847.*

Chaiton Muhtoo, (Plaintiff,) Appellant,

versus

Booneead Rae, Boolakee Sahoo, and others, (Defendants,) Respondents.

SUIT to recover amount unjustly distrained, laid at rupees 41-7-6.

The plaintiff stated that he had paid the rent of the year 1253 for the land he held, nevertheless the zemindars and their gomashtha had distrained his effects and obliged him to pay it a second time, demanding rent moreover for more land than he held and at an exorbitant rate. He cited witnesses, who supported his statement both as to the quantity of land in his possession and the payment of the rent, which they said the gomashtha defendant had stated, and received payment of, at rupees 17 and some annas for the whole land for the whole year. Defendants replied that plaintiff held 5 beegahs, 12 biswas of land, at 9 rupees per beegah, according to a kubooleut executed by him for 1253 Fuslee, which kubooleut they proved by the evidence of the subscribing witnesses, and as the plaintiff had no receipt for the sums alleged to have been paid by him, the moonsiff dismissed the suit with costs.

Appellant now contends that a local enquiry should have been made as to the extent of the land in his cultivation, and the proper assessment upon it, urging as he had done in the lower court, that the kubooleut was a forgery in proof of which he appeals to his signature upon the vakalutnamah on which the suit was instituted.

Although I do not think that the signature on the kubooleut corresponds exactly with that on the vakalutnamah, yet as this is not evidence on which the signature could be pronounced a forgery; and seeing in the papers of the case no reason to doubt the evidence of the subscribing witnesses to the kubooleut; further as plaintiff's alleged payments in the absence of receipts cannot be admitted, nor therefore can the evidence of his witnesses, who speak to that point

as well as to those touching the extent of the land, and the rate of the rent, be believed; I therefore dismiss the appeal, and affirm the moonsiff's decision, directing the respondent to be informed through the lower court of this decision.

THE 16TH MAY 1848.

No. 69 of 1847.

Appeal from the decision of Anund Misser, Moonsiff of the City of Patna, dated the 18th March 1847.

Putnee Chowdhree, (Defendant,) Appellant,

versus

Bhowancee, (Plaintiff,) Respondent.

SUIT for boat hire, laid at rupees 146-6-6, including interest.

Defendant pleaded payment of the amount agreed upon, and submitted the ledger, (buhee khata,) of his doukan at Narain-gunge, and caused the evidence of his gomashta at that place to be taken in proof of the fact.

The moonsiff, finding on the report of a muhajun employed to examine the ledger, that there were some irregularities in the entries of credit and debit of the sum alleged to have been paid at Naraingunge, particularly the debit bearing date four days after the credit; and considering the vacillation evinced in defendant's statements of the particulars of the payments to throw discredit on those statements, was not satisfied with the proof of payment, and decreed the amount sued for, with costs.

The appellant pleads that it is the custom among the mercantile community to pay up the whole of the stipulated boat hire at the time the goods are put on board, and that the enquiry of the moonsiff was incomplete on this head. The moonsiff, however, did examine evidence and receive a muzhernama, signed by several persons, upon this point; and even had he not done so, I cannot think the plea of any avail, for the strongest evidence as to the prevalence of a custom would not be taken as proof that that custom had been observed and acted upon. Secondly, appellant pleads that the beejuks sent with the goods, containing mention of the boat hire having been paid, would have corroborated, had the moonsiff examined them, the ledger. As, however, consistently with the practice of the courts (vide Dewanny Adawlut Report, page 271, of vol. II.) an entry in a muhajun's book of the debit of a sum of money, though the payment may be deposed to by his gomashtas, or stated by them in other documents, cannot be taken as sufficient evidence of the payment against a claimant; this objection must also be over-ruled.

On a perusal of the record, the decree is, in my opinion, just and proper, and I hereby dismiss the appeal and affirm the moonsiff's decision. This decision will be communicated to the respondent through the lower court.

THE 17TH MAY 1848.

No. 70 of 1847.

Appeal from the decision of Unund Misser, Moonsiff of City Patna, dated 10th March 1847.

Luchmun Sah and others, (Plaintiffs,) Appellants,
versus

Moost. Vazeerun and others, (Defendants,) Respondents.

SUIT to recover right of way by destroying a building, laid at 30 rupees.

The plaintiffs sued, on the ground of a thoroughfare for carriages having been stopped in consequence of the erection of a building by the defendants, and plaintiffs' approach to their dwelling on that side from the high road thereby cut off. The moonsiff, on an inspection of the ground, found that it would be impossible for a wheeled carriage to approach the entrance of plaintiffs' dwelling, were the building of defendants removed, which plaintiffs sued to have pulled down, and therefore that their right of way could not have been prejudiced, as they contended, by defendants; on the contrary, that the natural and proper approach to plaintiffs' dwelling from the highway was on the opposite side. The moonsiff, therefore, on this and other grounds, dismissed the suit with costs. On an inspection of the record, this decision appears to me to be perfectly correct, notwithstanding what appellants have urged relative to the decision being in contravention of an order of the Sudder Nizamut Adawlut in appeal from the sessions court, which order, as demonstrated in the decision, is not capable of availing plaintiffs' case, and is indeed irrelevant to their pleas. I therefore dismiss the appeal, and affirm the decision, directing notice of this order to be given to respondents through the lower court.

THE 17TH MAY 1848.

No. 71 of 1847.

Appeal from the decision of Moulvée Sujjad Alli Khan, Moonsiff of the Western Division, passed on the 23d February 1847.

Ahmud Khan, (Defendant,) Appellant,
versus

Byjnath Muhto, (Plaintiff,) Respondent.

SUIT to reverse a distraint of effects, laid at rupees 109, 0 anna, 9 pie.

The plaintiff sued simply to obtain the reversal of a distraint of effects after the said effects had been brought to sale by the native commissioner, saying he should sue at a future time for the reversal of the sale or for damages for losses sustained in consequence of the sale; the reason assigned for not doing so at once being, that he could not obtain the sale papers from the native commissioner's office. The moonsiff's investigation is incomplete, inasmuch as he has omitted to notice in his decision the plea of plaintiff that the continuance of the attachment was contrary to rule after he had tendered security. The decision is moreover faulty, inasmuch as the thing awarded is not clearly expressed, neither is the mode of execution apparent; for the award is, that the distraint be reversed. Now how this is to be done, that is, if the terms have any meaning at all, how the distrained property is to be released from attachment, viz. by annulling the sale, or in any other way, is not expressed in the decree. I therefore reverse the decision of the moonsiff, and remand the case for re-trial with reference to the following points: first, whether the suit is of a clear and specific award, capable of execution; secondly, if so, whether the plea of plaintiff noticed above as having been unnoticed, if relevant, is established or not. The amount of the institution fee on the appeal will be returned to the appellant.

THE 18TH MAY 1848.

No. 73.

Appeal from the decision of Anund Misser, Moonsiff of the City of Patna, passed on the 10th March 1847.

Moost. Lukkho, (Plaintiff,) Appellant,

versus

Leela Singh, (Defendant,) Respondent.

SUIT for maintenance at the rate of 7 rupees per mensem.

The moonsiff nonsuited the plaintiff on two grounds, first, because the value of the suit was not assessed, secondly, because the plaintiff did not state the amount of ancestrel property possessed by the defendant, who is the father of her deceased husband, on which her title to such a handsome provision would depend. In the appeal it is contended that there was no irregularity in the form in which the suit was instituted, and that it was sufficient that the defendant was alleged to be worth many thousands of rupees, in the petition of plaint.

The moonsiff's decision is irregular and inconsistent with itself, for while it states that the suit is disposed of without a decision on the merits, it pronounces upon one point which might have to be argued on the trial of the cause, viz. the right of plaintiff with

reference to the possession or non-possession by the defendant of ancestrel property. I therefore reverse the decision, and remand the case for revision and a new decision with reference to the above remarks. The value of the paper on which the appeal has been instituted will be returned to the appellant.

THE 18TH MAY 1848.

No. 77 of 1847.

Appeal from the decision of Anund Misser, Moonsiff of the City of Patna, passed on the 29th March 1847.

Moost. Runnoo, (Plaintiff,) Appellant,

versus

Hcera Lal, (Defendant,) Respondent.

SUIT for maintenance at the rate of 7 rupees per mensem, laid at 7 rupees.

The grounds of this suit, stated in the plaint, were that in Assar 1250, plaintiff went to live with defendant as his mistress, (mud-khoolah,) taking with her valuables to the value of many thousand rupees, and that defendant had now in Cheit 1253 expelled her from his dwelling, retaining her property and making no provision for her. The moonsiff, believing the plea of the defendant denying all the facts of the plaint, partly on the ground of two of the plaintiff's witnesses denying all knowledge of the facts on which they were cited to give evidence, and lastly on the ground that plaintiff had brought a similar complaint, viz. of retaining possession of her property, against one Nundkishore in the foudjaree court in the year 1843, A. D., which was dismissed, and in course of the enquiry upon which plaintiff appeared on the report of the darogha to be a person in needy circumstances and of abandoned character, dismissed the suit with cost.

Appellant's plea that the moonsiff improperly decided the case with special reference to the point of the retention of her property by defendant, which she alleges was not the point in debate, is evidently futile, as, according to the plaint, that appears to be one of the chief grounds for the suit. She alleges in the next place that the moonsiff's investigation was not complete, inasmuch as several of her witnesses were not examined. From the proceedings of the lower court, however, it appears that they were duly summoned, and if the plaintiff thought their evidence requisite she should have pointed them out, which she did not. It is stated in the appeal that plaintiff's vakeels made application for further process to procure the attendance of the remainder of

her witnesses, but no reference is made to any written application, nor is any found on the record.

On a perusal of the decision, the pleadings, and the evidence, I am of opinion that the decision is just, and I therefore confirm it and reject the appeal, directing that this decision be made known to the respondent through the lower court.

THE 31ST MAY 1848.

No. 38 of 1846.

Appeal from the decision of Mr. E. DaCosta, Principal Sudder Ameen of Patna, passed on the 21st August 1846.

Bisharut Kureem, Shurafut Kureem, Moost. Hyat-oon-nissa, and Hadaet Kureem, (Plaintiffs,) Appellants,

versus

Hyat-oon-nissa, (purchaser,) Muhmud Ameer, Shah Ghosun, Gohur Alli, and Nawzish Hossein, (Defendants,) Respondents.

Tej Kooer and Deep Kooer, Objectors.

SUIT for malikana, &c., valued at Company's rupees 1,373.

The appellants instituted this suit to establish their proprietary right to mouzah Abdooruhmanpore, of which a settlement was made with the defendants as lakhirajdars and proprietors, to obtain a decree for malikana, with arrears from the date of the resumption of the rent-free tenure, and confirmatory of their tenure of 12 beegahs of malikana land. The principal sudder ameen gave judgment in the following terms:—

“The proofs adduced by them (the plaintiffs) in support of their claim are no ways satisfactory nor conclusive, so as to warrant the foundation of a decree thereupon. On the contrary it is clear from the roobakaree of resumption dated 25th April 1838, that Meer Kulunder, the ancestor of Moost. Imamun, &c., (the defendants,) was the proprietor and lakhirajdar of the estate, and that his heirs and representatives, having continued in the possession and management of the lands, were entitled to the benefit of the settlement, which was accordingly concluded with them on the 10th December 1840, in two distinct lots. Now if the plaintiff had any proprietary right in the soil and received malikana in coin or land, provision for the due payment of it would have been made at the time of settlement, as has been done in the case of mouzah Rampore, for which the lakhirajdars pay rupees 95-14 as malgoozaree to Government, and 18-15 malikana besides for the proprietor. But by the roobakaree of settlement it appears that the plaintiffs never even attempted to make a representation of their claim to the revenue authorities. This suit must therefore be dismissed with all costs under Rule I. passed by the Supreme Government of Bengal and

circulated with the Circular Orders of the Sudder Board of Revenue, dated 14th July 1837."

In my opinion this is a suit which cannot be entertained in the civil court under the existing laws; for, *first*, under the 15th Section of Regulation VII. of 1822, the collector was the authority before whom plaintiffs should have sought in the first instance to establish their proprietary right, if they wished to claim what the law allows to proprietors on the settlement of resumed rent-free lands, viz. the settlement, unless some good reason existed, as want of information or the like, for plaintiffs' not having so prosecuted their claims. No such reason has been established. *Secondly*, plaintiffs do not even now claim what the law allows by virtue of the proprietary right, viz. possession upon the lands: they claim malikana, which is an allowance to proprietors who are excluded from the benefits of the settlement under particular circumstances or under particular provisions of the law, in which predicament they do not stand. *Thirdly*, had the settlement been made with the lakhirajdars under the provisions of Regulation XIII. of 1825, on a consideration only of their long occupancy, the plaintiffs could have recovered in the civil court only what they enjoyed as malikana, whether in money or land, previous to and up to the date of resumption; for any thing further which they might claim under circulars of the Board of Revenue, based upon orders of Government not yet embodied in any legislative act, they should have applied to the revenue authorities. It appears from the pleas of the plaintiffs that they assert themselves to have been and to be still in possession and enjoyment of the land amounting to 12 beegahs. With their enjoyment of this land they do not state that defendants have interfered, and therefore, as regards that, there is no ground of action. I therefore dismiss the suit with costs.

THE 31ST MAY 1848.

No. 5 of 1847.

Appeal from the decision of Mr. E. DaCosta, Principal Sudder Ameen, passed on the 29th January 1847.

Mt. Beebee Wuheedun and Hukeem Abool Hussun, (Plaintiffs,)

Appellants,

versus

Adheean Rae, Chuturdharee Singh, and others, (Defendants,)
Respondents.

SUIT, laid at rupees 1,599-8-0, for possession on certain lands by setting aside a deed of lease in perpetuity.

The plaintiffs pleaded that defendants held their lands upon a forged mokurruree pottah, dated 25th Shaban 1209 F. S., fixing

the rent of 38 beeghas of land at 1 rupee per beegha. Defendants pleaded that the pottah is genuine, and that they have all along paid 38 rupees per annum to the former maliks, and that the plaintiffs' suit is barred by the rules of limitation. And the principal sudder ameen, finding these pleas proved, dismissed the suit with costs.

This decision is partly grounded upon a decision of the city moonsiff, dated 10th May 1845, confirmed in appeal under date the 27th December 1845, by which the mokurruree tenure of the defendants is said to have been established. This decision, passed in a suit brought by the defendants against the plaintiffs in the present suit, and which gave rise to the present suit, was to the following effect: It appears from the receipts of 1st Magh 1210, of 15th Asar 1232, of 1st Jeyt 1233, from a note written by Buhoo Begum, and twelve other receipts, (hoojjut) that the alleged defaulter (*i. e.* the plaintiff in that suit) held possession of the lands under the mokurruree tenure; since therefore the validity of the said tenure is the matter in debate, it would be unjust to award to the defendant the sum realized by a distraint made without any kubooleut, or agreement, to support it, and defendants ought to have sought their remedy in a suit to set aside the mokurruree lease. By this decision clearly is decided the important point of respondents' possession under the mokurruree tenure for a period of more than 12 years, previous to the institution of this suit, and previous also to the settlement of the land revenue on the estate made in the Fuslee year 1245, consequent upon its recent resumption, which settlement was prior by several years to the moonsiff's decision in question.

I am therefore of opinion that a consideration of this decision of the moonsiff would have been sufficient ground to declare the suit barred by the limitation of time, and accordingly dismiss the appeal, confirming the decision of the principal sudder ameen. This decision will be notified to the respondents through the principal sudder ameen.

THE 31ST MAY 1848.

No. 8 of 1847.

Original Suit.

Naodharee Singh, (Plaintiff),

versus

Moost. Wuheedun, Hakeem Abool Hussun, and Soobuns Muntoo,
(Defendants.)

SUIT for possession on 82 beegahs 1 cottah of land by right of cultivation, with wasilat, laid at rupees 1,517-2-6.

The plaintiff stated that his grandfather, father, and himself held this land at a fixed rent of 69 Sicca rupees, or Company's rupees 74-8-6, for a long series of years under the holder of the estate mouzah Sohgee Azeem Chuk, pergunnah Azeemabad, upon a rent-free tenure, and the farmers from them, up to the revenue settlement made in Fuslee 1245, consequent on the resumption of the rent-free tenure, and continued, even after the settlement, to hold and pay the same rent according to the rates assumed in the settlement roobakaree; that in 1252 Fuslee defendants, demanding rent at the rate of three rupees per beegah, contrived to eject him on his refusal to pay at that rate by means of a proceeding of the magistrate under Act IV. of 1840. The defendants, Wuheedun and Hakeem Abool Hussun, deny both the right and possession of plaintiff upon the lands, which they say are cultivated by several cultivators. Defendant Soobhuns Muhtoo also replied, referring to the answer of the other defendants aforesaid, and urging other pleas applicable peculiarly to himself.

The proof adduced by plaintiff, in support of his claim, consists of, first, a pottah purporting to be granted by Alee Azeem Khan, the rent-free occupant of mouzah Sohgee Azeem Chuk, in 1201 Fuslee, for 194 beegahs, 3 cottahs, (the number of beegahs claimed in this suit and the one next on the file, No. 9,) to Mohun Rai, said to be ancestor of the plaintiffs, for five years; secondly, receipts for rent at the rates mentioned in the pottah from 1246 to 1251, inclusive; thirdly, the depositions of three witnesses, whose statements support the plaint; fourthly, a khut purporting to be written by Buhoo Begum, at that time occupant of the mouzah, admitting the occupancy of plaintiff as cultivator upon 82 beegahs, 1 cottah. All the documents are devoid of authentication, and the evidence of the witnesses is contradicted by the absence of any entry of lands in the name of plaintiff in the survey papers upon which the settlement of 1245 Fuslee was made. If, moreover, the plaintiff had been, as their witnesses state, in occupancy of these lands, in succession to his ancestors, it is difficult to understand how he refrained from laying claim, at the time of the settlement, to the hereditary occupancy of these lands, so as to warrant the deputy collector in the statement made by him in the 3d chapter of the roobakaree of settlement, that no claim had been urged by any cultivator to hereditary occupancy.

The plaintiff being out of possession was clearly called upon to prove his right, in which he has totally failed. I therefore dismiss the suit with costs.

THE 31ST MAY 1848.

No. 9 of 1847.

Original Suit.

Chutturdharee Singh, (Plaintiff,) *versus*

Moost. Wuheedun and Hukeem Abool Hussun, (Defendants.)

SUIT for possession by right of cultivation on 112 beegahs, 2 cottahs of land, with wasilat, laid at rupees 1,549, 9 annas, 0 pie.

The pleas and the principal part of the evidence, viz. the pottah and the depositions of witnesses, are the same as in the preceding case. The receipts are similar and equally unattested. As the pottah contains the quantity of land sued for, both in this and in the preceding suit, it is left to be inferred by the plaintiff that both originally formed one tenure, subsequently divided by the heirs of the original cultivator. This suit is dismissed with costs on the same ground as the preceding one.

THE 31ST MAY 1848.

No. 5 of 1847.

Original Suit.

Mr. J. A. Boilard and Mrs. Boilard, (Plaintiffs,) *versus*

Kishnoo Beebee, (Defendant.)

SUIT for the amount of a bond, (bhurnenamah,) with interest, laid at rupees 20,600.

The plaint sets forth that the defendant had borrowed from the late Mr. Lenancker, to whose estate plaintiffs succeeded as his heirs, the sum of rupees 15,000, in order to purchase an estate called Mokurruree Mouzah Dergoon, and afterwards, having received a further sum of rupees 5,000 from the said deceased, defendant, on 11th December 1844, executed a deed, duly registered, engaging to pay the principal, and interest at 13 annas, 4 pie per mensem, of both sums, on or before the end of Bhado 1253 Fuslee, and pledging the aforesaid estate by way of security for the payment, and at the same time deposited the title deeds of the estate with Mr. Lenancker aforesaid; and that she continued to pay the interest through Munohur Lal, the collectorate treasurer, till the month of December 1846.

The defendant denies the receipt of the money, the execution of the deed, and the whole transaction, declaring that Junesur Doss, gomashta of the firm of Hingun Lal and Munohur Lal, conspired with the deceased, Lenancker, in fabricating the deed, taking advantage of the title deeds of the estate having

been deposited by her with his employer, Munohur Lal, and Bukhtour Lal, who at the time of her purchase of the estate held possession of it under a deed of conditional sale (bye-bil-wuffa,) the amount due under which, viz. rupees 12,500, she agreed to pay, and which she did pay excepting the small sum of rupees 1,000, for which she executed an engagement and deposited the title deeds as aforesaid with them. Defendant urges that the deed was registered not in the zillah, where the transaction is alleged to have taken place, as it might to have been, but in Behar, in which the estate is situated; and that the mookhtyarnama, under which the registry was effected, is also a forgery, not having her seal attached to it, as a general power executed by her on a previous date, viz. the 11th of December 1844, has.

In the juwab-ool-jowab plaintiffs refer as one of the best proofs of the execution of the deed in question to a petition presented by the vakeels of defendant in the court of the principal sudder ameen of zillah Behar, under date 4th May 1846, in which she admitted all the facts as stated in the plaint; but in her answer defendant urges that the presentation of such a petition by her vakeels was an unnecessary and unauthorized act on their part, and cannot be held binding on her.

The deed on which this action is founded purports to be a "tumussook mooshtumil bhurnenamah," acknowledging the receipt, on a previous occasion not specified, of 15,000 rupees, as a loan to purchase mouzah Dergoon, and of a further sum on the date of this deed of rupees 5,000, and mentioning the deposit of the title deeds of the estate besides the stipulations mentioned in the plaint. It bears the signature of Kishnoo Beebee, affixed for her by Junes-sur, gomashtha of Munohur Lal, and is attested by the said Junes-sur, by Munohur Lal, Munna Sing, Bhyro Sahae, Moolchund, and Gopalchund, as subscribing witnesses, not one of whom have plaintiffs cited to give evidence, nor have they stated any reason for not doing so.

They have brought into court, to prove the execution of the deed, the payment and delivery to defendant of the sum of 5,000 rupees, and of her own acknowledgment formerly given for rupees 15,000, and the deposit by her with Lenancker of the title deeds of the estate pledged by the deed, Mr. John Francis, Fukeer Chund, and Oomrao Singh, the two last in the employ at present of plaintiffs, formerly of Lenancker, and none of them subscribing witnesses to the deed. Such evidence cannot be permitted to be substituted without good cause shewn, of which there is none whatever, for that of the subscribing witnesses, and I accordingly pass it over without consideration, and proceed to the next proof adduced by plaintiffs, the alleged acknowledgment of the facts of the plaint in the petition of 4th May 1846.

It appears from a proceeding of the principal sudder ameen of Behar, under date 30th May 1846, copy of which is filed by plaintiffs that Chumput Lal's rights in mouzah Dergoon being advertised for sale, the defendant in this case came forward, objecting to the sale, and shewed that the debtor's rights in the estate had already been sold by orders of the civil court to Muhesh Lal, who she alleged sold to her; and that on the sole ground of this sale, the proceedings were put a stop to. Kishnoo Beebee's petition, dated 19th February 1846, a copy of which has been filed by her, states all that it was necessary to state in order to get the property struck off the advertisement; but on the 17th April a petition was filed by a mookhtar on the part of Lenancker, stating nearly all the facts alleged in the plaint in this suit, and was admitted on the proceedings notwithstanding its irregularity, on the mookhtar stating that it required no order to be passed upon it. The petition of May 4th, filed by the vakeel of Kishnoo Beebee, reiterates the statements of Lenancker's petition and appeals to it for proof of Kishnoo Beebee's possession on the property. The presentation of this pair of petitions bears a very suspicious aspect, to say the least of it, and cannot be admitted as proof of the reality of the transaction when the direct and proper proof of it is without explanation withheld.

The plaintiffs' possession of the title deeds is a circumstance in their favor, and had they taken the proper course in regard to the establishment of the deed, might have constituted strong corroborative evidence of its genuineness. The fact, however, alone cannot substantiate the plaintiffs' statements.

On the side of defendant, her petition of the 19th February 1846, already alluded to, mentions as facts before the court of the principal sudder ameen, the purchase of Muhesh Lal for rupees 7,600, and the mortgage, or bye-bil-wuffa of Munohur Lal and Goverdhuu Lal, for 12,500 rupees; and it may be inferred that she as the purchaser would have had to pay off the mortgage. That the title deeds were deposited by her with Munohur Lal is therefore by no means improbable. Her failure to call that person to give evidence to the fact need not be noticed more particularly, when for the reasons already assigned the weakness of the plaintiff's case is so apparent.

Being of opinion therefore that the proof of plaintiff's case has failed, I dismiss the suit with costs.

ZILLAH PURNEAH.

PRESENT: D. PRINGLE, Esq., JUDGE.

THE 10TH MAY 1848.

. Appeal No. 39 of 1847.

Officiating Sudder Ameen, Itrul Hossein.

Sheikh Panchoo, (Defendant,) Appellant,

versus

T. Meliss, (Plaintiff,) Respondent.

Muneeroodeen Ahmud—Vakeel for Appellant.

Feizoolah and Bama Churn—Vakeels for Respondent.

THE respondent, farmer, sued the appellant, tuhseeldar, for balance of rents collected by him, being rupees 552-9-3, for the year 1253, who replied that he had accounted for these in full, a receipt for rupees 583 only being given him by respondent, in support of which five duplicate chelans were exhibited by him, which witnesses were called to verify.

The sudder ameen, finding no receipts forthcoming for the amount here claimed, delivery of which, if refused, the appellant would certainly have insisted on, and the duplicate chelans to be entirely in the power of the party who produces them, while the wasil-bakee account, as sworn to by the putwary, shews no such payments to have been made, decrees the amount claimed, with abatement of rupees 60 for charges of collection, improperly included.

In appeal it is urged that other witnesses remained to be examined, and that his employer's word was taken for delivery of receipts hereafter.

JUDGMENT.

The reasons assigned by the sudder ameen for decreeing this claim are not here attempted to be met. The appeal is therefore dismissed, with costs against the appellant.

THE 11TH MAY 1848.

Appeal No. 23 of 1847.

Sudder Ameen, Mr. Noney.

Dowlut Chowdry, (Defendant,) Appellant,

versus

Jogeeekoomr, (Plaintiff,) Respondent.

Seetulchund Rae—Vakeel for Appellant.

Bama Churn—Vakeel for Respondent.

THE respondent brought this action in the lower court, to recover damages for produce of 40 beegas 3 ks. of land, of which the appellant had forcibly possessed himself, laid at Rs. 748, alleging that the latter having in 1252 got a sub-lease of the farm, he demanded an increase of rent, to which respondent objecting, when the crop was stored, he forcibly removed the whole. The appellant replying, that the proper jumma of lands held by respondent, is Rs. 121-2, while he disclaims all privity to the crop's removal. The sudder ameen finds the evidence brought by Dowlut Chowdry in no way to exonerate him, who took no steps to adjust the rent when served with a notice by the collector, on application of the respondent, while the witnesses of the latter prove as set forth in the plaint, save the mustard and kissaree so included; the value of the paddy only is therefore decreed, or 159 rupees 10 annas.

In appeal it is urged that appellant only demanded pergunnah rates, and that respondent had agreed to an adjustment, on which the crops were released.

JUDGMENT.

It is admitted by the appellant that, on entering on his lease in 1252, no written engagement was taken from the respondent, fixing the rent to be paid by him; moreover, that the crop was released, on the latter engaging to pay the fair jumma; it is thus seen that the crop was attached in the first instance, which under Sec. 13, Reg. V. of 1812, was illegal, a compliance with the conditions therein prescribed for presentation of a jumma-vasil-bakee being, under the circumstances, impracticable. It is likewise seen that no notice of increase to be demanded from respondent was ever served on him; and as to appellant's averment of the crop's release, on conditions agreed to by respondent, we find from petition of the latter to the collector, there to deposit his rent, that no such consent was ever obtained, of which appellant must necessarily have become aware from the notice then served on him—it was impossible, therefore, that the crop could have been released under any such misconception, and, if released unconditionally, what need was there for the respondent thus to complain? The appeal is therefore dismissed.

THE 27TH MAY 1848.

Appeal No. 21 of 1847.

Sudder Ameen, Mr. Noney.

Kundya Jha, (Plaintiff,) Appellant,
versus

R. D. Johnson and others, (Defendants,) Respondents.

Mirza Ahmud—Vakeel for Appellant.

Gopeemohun Burat and Bamachurn—Vakeels for Respondents.

THIS action was brought to recover value of 10 head of cattle, laid, with damages for loss of crop, at rupees 611-3. The appellant alleging that 24 plough bullocks and two cart bullocks were forcibly driven away from the pasturage by the co-defendants, servants of respondent; of which number, on his complaint lodged before the magistrate, 16 were given up to the police; the present suit being for recovery of the others. The respondent replying that he was quite ignorant of the cattle being taken, but that all taken were restored.

The sudder ameen finds from local enquiry of ameen, that the appellant did not possess 24 head of cattle to be so taken; and that all found with respondent, were then restored by the police; that the suit, therefore, is unfounded and false.

The evidence to 26 in all being driven off, is cited in appeal.

JUDGMENT.

The proceeding held before the magistrate being here called for, it appears that there are only two witnesses to the driving away the cattle, one of whom is owner of the two cart bullocks. If more in possession of respondent, the appellant had only to point them out to the police, and they would have been restored to him. The enquiry of the ameen, moreover, shews that he did not then possess above 16 bullocks, if so many. Were he now to point them out, and prove his title, they would, on petition to the magistrate, be restored; but in the absence of proof to the capture of above 16, the decision is affirmed, the appeal being dismissed.

THE 29TH MAY 1848.

Appeal No. 7 of 1847.

Sudder Ameen, Mr. Noney.

J. Roche, (Plaintiff,) Appellant,
versus

Sheikh Lootf Ali and others, (Defendants,) Respondents.

Seetulchund Rae and Gopee Mohun Burat—Vakeels for Appellant.
Bama Churn—Vakeel for Respondent.

THIS is an action of ejectment, laid with mesne profits, at rupees 492-½ pie. The appellant, Roche, appearing as vendee, in the

name of Gopal Das, his servant, against Lootf Ali, vendor of five beegahs lakhiraj land, of which, he states, he was subsequently disseised. The latter, admitting the transfer and conveyance, pleads not guilty.

The sudder ameen finds that the deed of sale is in name of Gopal Das only, and no conveyance made to Rocke; moreover, that in a suit previously determined, No. 42 of 1844, there was filed a deed of gift, under which Rocke, on the 9th April 1844, transferred the whole of his property to Bunnoo Jan, who does not here appear; lastly, that possession was never obtained under the deed of sale here cited, being opposed by the zemindar, who declared the lands to be included in those for which he paid revenue; on which grounds he dismisses the claim.

In appeal it is alleged that the lands were duly conveyed to appellant; that Gopal Das is his servant, whose name merely appeared in the deed; moreover, that possession was obtained under the same.

JUDGMENT.

I consider the grounds stated in the above decision, conclusive, for dismissing this claim. The suit there referred to, in which the transfer to Bunnoo Jan is established, having been appealed to this court. From a local enquiry, moreover, held in this case, it is shewn, that appellant was never dispossessed of the land in question; to which the zumindar declared, the vendor had no right whatever. The appeal is therefore dismissed.

THE 29TH MAY 1848.

Appeal No. 19 of 1847.

Sudder Ameen, Mr. Noney.

Suboorj Lal and others, (Defendants,) Appellants,

versus

Jhubbhun Sing and others, (Plaintiffs,) Respondents.

Bama Churn—Vakeel for Appellants.

Seetulchund Raee—Vakeel for Respondents.

SUIT to recover Rs. 1,000, damages for crop forcibly taken possession of by appellants. The respondent stating, that beegahs 1,944, included in gutches Chutter Tewari, Terassee, &c., lakhiraj lands of Sowun Lal Missur and others, being resumed and settled, he received a pottah for gutch Tewaree at a jumma of 71 Rs. from 1248 to 1251, as renewed in 1252 to 1255. The crop grown on 100 beegahs of which appellant thus forcibly removed, when respondent complained to the magistrate, by whom he was convicted and fined. Who replies that respondent cultivated 32 beegahs in

gutch Terassee, for 82 beegahs of which appellant has a pottah, and paying no rent, the crop was attached, which the other, however, forcibly carried off.

The sudder ameen finds from result of local enquiry, that the land in dispute from which the crop was removed, belonging to gutch Chutter Tewaree, amounts to beegahs 92, 9½ kottahs, by standard rod, as fixed at the settlement, the produce of which, taken at an average of 15 maunds to the beegah, is 1,484 maunds, 30 seers, but rejecting the respondent's estimate, the market value, or two maunds for the rupee is taken, and rupees 693, 6 annas awarded accordingly.

JUDGMENT.

The decision here depends simply on the locality of the land on which the crop was produced. It is proved that the respondent cultivated and sowed it, that he had moreover, from its belonging to gutch Tewaree, a right so to do, and of a consequence to reap it, the satisfaction of which, however, was denied him by the appellant, who must be held responsible for the damages, as above fixed, and most properly decreed against him; the appeal being dismissed. ❀

THE 31ST MAY 1848.

Appeal No. 25 of 1847.

Sudder Ameen, Mr. Noney.

Kurrum Khan, (Plaintiff,) Appellant,

versus

Bassoo Sing and others, (Defendants,) Respondents.

Fuqueera Lall—Vakeel for Appellant.

Seetulchund—Vakeel for Respondents.

THIS suit was brought *in formá pauperis*, to recover damages for crop forcibly taken, with that grazed by buffaloes of respondent; laid at rupees 404-13-6. The appellant stating, that he held 15 beegahs in Bhowaneepoor, at a rent of 15 rupees, of which respondent having obtained the farming lease in 1252, he exacted rupees 18-13-6, and in Magh of that year finally carried off 5 maunds of paddy, besides 60 seers paddy in plant, the seed crop of six beegahs of the paddy so cultivated, and ten beegahs bhaolee, which in consequence remained fallow; who, in Assar 1253, grazed his cattle on 3 beegahs aghunnee crop, and 15 cottahs bhadhoee; besides 6 beegahs in mal land, and 10 beegahs khessaree and mustard, so laid waste. The respondent pleads not guilty, saying he merely demanded pergunnah rates from appellant, at which rent was refused. The sudder ameen dismisses the claim, on the

ground that eight witnesses brought to prove it, seem to have been tutored, who deliver their evidence 'like a learned parrot.' In appeal it is contended, that the case is completely proved, and not so as to create suspicion.

JUDGMENT.

I am unable to perceive the grounds on which this claim has been dismissed. It is of necessity dependant for proof on parole evidence; though the answer of the defendant would create a strong presumption in its favour; who, it is thus seen, of his own authority attached the appellant's crop without any adjustment of his demand, making himself thereby responsible for all loss thus occasioned. To prove the several averments there are here eight witnesses; five to the damage thus done; and two the pownees of the village, to whose charge the crop was committed, on its attachment by the agent of the respondents; a portion of the khessaree and mustard being sown, it is necessary to explain, on the same land as the paddy. The rates quoted by the appellant, however, require abatement, being in excess of those obtaining in the district, likewise of the same as declared by the witnesses; on a careful review of whose statements I make the following award:

3 beegahs aghunee crop, grazed by buffaloes, produce 30 maunds, at 2 maunds per rupee,	15	0	0
Bhadooee crop on 15 cottahs land,	3	12	0
17 beegahs, crop taken,	85	0	0
4 beegahs khessaree ditto,	20	0	0
Ditto mustard ditto,	8	0	0
Seed crop 6 maunds 20 seers,	3	4	0

or rupees 135, with interest up to date of liquidation. The order of the lower court being reversed.

THE 31ST MAY 1848.

No. 20 of 1848.

Sudder Ameen, Mr. Noney.

Raja Enayeut Hossein, (Defendant,) Appellant,

versus

Sheikh Musseyutoollah, (Plaintiff,) Respondent.

Mirza Ahmud and Sectul Chund—Vakeels for Appellant.

Muneerooddeen—Vakeel for Respondent.

THIS action was brought by respondent to set aside a summary award for rent, of rupees 591-10-8, given in appellant's favor; his plaint setting forth that, on the resumption of the mchal,

respondent got lease of the same, of whom appellant holds as sub-lessee; the balance now claimed, being duly paid into the khas mehal treasury, by respondent's instructions; of which receipts are produced; who replies, that appellant held no such authority; moreover, that execution of the summary decree was never taken out. The sudder ameen, finding the payments to be duly made, as shewn by receipts granted from khas mehal office, sets aside the award, and decrees the amount claimed with interest. In appeal, while the former objections are repeated, it is urged that the order of the lower court was any wise to be confirmed to reversal of the summary decree.

JUDGMENT.

After careful comparison of the receipts produced, there can remain no doubt that the sum for which respondent has sued appellant, was duly paid into the khas mehal office. The appellant, in reply to respondent's plea, of the decree there obtained not being executed, averring that a puckha house was actually sold in satisfaction of it. This fact it was obviously essential should be determined before awarding a refund; the case is therefore remanded that such be done, and award made accordingly.

ZILLAH RAJSHAHYE.

PRESENT: G. C. CHEAP, ESQ., JUDGE.

THE 1ST MAY 1848.

No. 7 of 1847.

Appeal from the decision of Moulvee Abdool Ullee, Principal Sudder Ameen, dated the 24th March 1847.

(C) Ramchunder Baboo and Gopaul Doss Baboo, (Defendants,) Appellants,

versus

(A) Buktessuree Debea and (B) Hookumchand Behanee, (Plaintiffs,) Respondents.

THIS was a suit instituted by the drawee (B) and endorsee (A) of a *hoondee*, or bill of exchange, against the drawers (C.)

The bill ran thus: After the usual compliments—Takoordoss and Ramchunder of Rampore request Ramchunder Gundh and Rugoonath Doss Kolareh, of Mirzapore, to pay Hookumchand Behanee the sum of one thousand rupees, (rupees 1,000,) the half of which is five hundred, and the double one thousand, which sum has been received from Hookumchand Behanee, this 12th Soodee (or rise of the moon) of Jeit 1902 Sumbut, and which sum aforesaid is payable to him forty-one days after date.

(Signed) NOWNIT GUNDH.

Pay the amount of this *hoondee*.

Endorsed—This *hoondee* has been sold, through Sheebsunker Chowdree, to Buktessuree Debea.

(Signed) HOOKUMCHAND BEHANE.

Endorsed again—Sold to Lolla Rooploll.

(Signed) SEEODEEN ROY.

A appears to have made over the *hoondee* to the last endorsee, and on its presentation, payment being refused, it was returned to A, who with B brought this action against C, the drawers; and the principal sudder ameen, holding it to be clearly proved that B had paid the amount of the *hoondee* in full to C, gave A and B a decree against him for 1,000 rupees without interest. Against this decision, the appellants appeal and plead, *first*, that they know nothing of A, and had no dealings with her. She bought the *hoondee* of B, and must look to him for payment, in the

same way that she had been made liable by the party to whom the *hoondee* had been last endorsed over. That A and B could not jointly bring this suit or action against them, C, when B was legally responsible to A for the amount paid by her for the *hoondee*, and that A's agents have merely used B's name, because they saw no chance of recovering the money from him, B, who was not cognizant of the suit, having failed in business and gone, no body knew where. *Second*, that the evidence of the witnesses brought forward by A to prove that her *devan* accompanied B to C with 1,000 rupees was altogether false, and had been fabricated, for had such been the case, the *hoondee* would have been drawn out in the *devan's* name, or in that of A instead of B's. *Third*, that they have not received the full consideration from B for the *hoondee*, only 400 rupees had been paid, and 600 rupees, he had promised to pay, but had not fulfilled his promise, and this his accounts would show.

In a case of this kind it is best first to dispose of and consider what has been admitted. C admits having given B the *hoondee*, admits he was authorized to sell it or endorse it over to another person, and admits that payment was stopped by his orders. The *muhajunee dustoor*, or custom, in respect to bills, appears to be much the same as among English merchants. Notice in the case of a bill being dishonoured, has to be given to the endorsee and drawer, and as no plea has been put in that such notice was *not* given, it may be assumed that the appellant had due notice. The next question to be disposed of, with reference to the first count of the *woojoohat*, or grounds of appeal, is, who can sue to recover on a *hoondee* that has been dishonoured? There can be no doubt the holder, or endorsee of a bill, has a right to sue either the drawer or drawee, or both, in case of non-payment; and the circumstance of a bill having been obtained without adequate consideration, when it comes into the possession of a *bonâ-fide* holder for value, will not exempt or remove liability of the drawer; but that the drawee and endorsee can join in a suit against the drawer, admits of doubt. Their interests are quite different and distinct. If B sold A the *hoondee*, as stated in the endorsement, and received the full amount for it, what claim can he have either against A or C? I rather think, as stated by the appellant, A has made B a party to the suit without his knowledge. In another case before this court it was pleaded, if not shewn, that he had become *devallea*, or insolvent, and had absconded; and, though served with a notice, he has not appeared in this appeal. Under these circumstances I am of opinion that A and B could not jointly sue, and having done so must be nonsuited. The principal sudder ameen's decision is therefore reversed, and the plaintiffs in the original suit are nonsuited. The parties to pay their own costs in the principal sudder ameen's court, and appellants' in this court, to be chargeable to the respondents.

THE 2D MAY 1848.

No. 18 of 1848.

*Appeal from the decision of Mahomud Ullee, Moonsiff of Nattore,
dated the 26th January 1848.*

Godun Mundul, Panchoo Mundul, and Tuckee Paramanick,
(Defendants,) Appellants,

versus

Rajmonee Dassea, (Plaintiff,) Respondent.

THE respondent sued the appellants to recover 11 rupees, with interest, lent on bond to the latter in the year 1251 B. S. The moonsiff, after serving the notices and *ishtehars* on the defendants, and their failing to defend the suit, gave the plaintiff a decree *ex parte*. Against this decision the appellants appealed on the 23d February last; and yesterday one of them (Godun Mundul) filed a *woojohat*, or statement, containing the grounds of his appeal, pleading ignorance of the suit having been instituted, and denying the debt. After reading the decree I cannot find any thing illegal in the decision, and as under the Court's Circular of the 12th March 1841, (No. 141, vol. III.) an *ex parte* decision cannot on any other grounds be reversed, or sent back for further investigation, the moonsiff's decision is hereby affirmed, and the appeal dismissed.

THE 5TH MAY 1848. .

No. 1 of 1846.

Appeal from the decision of Moulvee Abdool Ullee, Principal Sudder Ameen, dated the 5th December 1845.

Dwarkanath Tagore, after his death, Debinderath Tagore, Geerinderath Tagore, and Mr. D. M. Gordon, (Plaintiffs,) Appellants,

versus

Mahomud Kurreem and Abdool Hakeem, (Defendants,) Respondents.

THIS suit was instituted by the original plaintiff before the moonsiff of Shahzadpoor on the 5th July 1843, to recover possession of 5 pakees of land appertaining to mouzahs Chandnee Nuggur Dalla and Mungul-haut at that place,—the suit being first laid at Rupees 275, viz. the land at the selling price of 25 rupees a pakee equal to 125 rupees, and the profits of a *mêla* held thereon at 150 rupees for one year (1249 B. S). The case was sent up by the moonsiff under the Sudder Dewanny Adawlut Circular Order dated the 26th May 1843,* published in the Bengalee Gazette of the 13th June *idem*, and was referred to the principal sudder ameen, when the plain-

* This Circular is not in the printed Circular Order Book.

tiff amended his plaint, laying his suit at eighteen times the estimated value of the land as above, together with 150 rupees, the profits of the *méla* for the year, total rupees 2,700. The defendants pleaded that the land was *lakhiraj*, forming a portion of a grant to Abdool Suban, an *Ameer-ul-Omrah*, and afterwards granted by Alum Shah Badsha Ghazee to their mutual ancestor, Abdool Azeez, for the support of the tomb of Mukdoom Shah, a Mahomedan saint, and other devout purposes; that from time immemorial, a *méla*, or fair, had been held on the land, in the month of Cheyt, the profits of which were bestowed on the fukeers and devotees who assembled there on the occasion, and also towards lighting up the tomb and repairs of the mosque; that the land had never belonged to any zemindar, nor was it included in the plaintiff's zemindaree of Esoofshai.

The principal sudder ameen, after examining copies of canoongoes' papers, and several witnesses, and going fully into the case, dismissed the claim, recording the land to be *lakhiraj*, and which the deputy collector of Pubna had also recorded, dismissing the Government claim to resume the same, after visiting the spot, and relinquishing 722 beegahs as *lakhiraj* belonging to the *musjeed*, or *mosque*, and *durga* of Mukdoom Shah. Against this decision the present appeal was preferred, and as the principal sudder ameen had omitted to call upon the collector to report, before coming to a decision, as directed in the Sudder Dewanny Adawlut's Circular Order of the 25th February 1831, a reference was made to the deputy collector of Pubna to report if the land was liable to the payment of revenue, or *lakhiraj*; and, if the latter, if it was included in the land his predecessor had, on the 18th December 1843, decided was *lakhiraj*. This order was passed on the 6th August 1847, and on the 15th September following the deputy collector (Mr. Atherton) replied that it appeared to be included in the land his predecessor had decided was *lakhiraj*, but this could not be stated for certain without visiting the spot. On the case being again taken up, on the 19th February last, the parties were informed that to reconcile doubts I would go to the spot on my next tour of circuit to Pubna. Accordingly, on the 31st March, I visited Shahzadpoor, and, accompanied by the parties and their agents, went to the tomb of the saint, said to be a descendant of some Persian or Mogul prince, and from whose residence at the place it was called Shahzadpoor, its former name being Teesa. The tradition is that this individual was killed fighting with the rebels near the river side, and that a tomb (which was pointed out to me) was erected over the spot where he fell, in which his head was placed, and the trunk, or body was buried near the mosque. This is a small *pucka* building, containing no inscription or tablet to judge of its age or by whom built. The tomb is in a building to the east of the mosque, and the ground in dispute lies to the west, separated only by a narrow path, running north and south,

close to the mosque; and it is difficult to imagine how, if so large a quantity as 722 biggahs had been assigned for the support of the mosque and tomb, so small a piece of ground as 5 pakees were not included, though *immediately* in the vicinity and adjoining the mosque. And more, to the north and north west of the land in dispute, are two large tombs, said to be those of followers of the prince who was killed, and both beyond the boundary pointed out by the appellants' agents as the land claimed by them; and it is not easy to reconcile these tombs being placed where they are, if the land intervening did not belong to the mosque and was not *lakhiraj*. Again it may be asked, "why were these tombs not placed nearer the principal tomb?" It is pleaded that from time immemorial a *mela*, or fair, has been held on the disputed land, (which is an open space,) and supposing this *mela* to have been established, (as there is every reason to believe it was,) in commemoration of the individual who built the mosque and was buried near it, the probability is, the ground was kept clear of tombs for this very purpose. Under all these circumstances I see no reason for disturbing the decision of the principal sudder ameen, or impugning the recorded opinion of the deputy collector of Pubna (Mr. Lushington,) who visited Shalhazdpoor and inspected the land in dispute; and who have both upheld the validity of the respondents' title to hold the land as *lakhiraj*. The principal sudder ameen's decision is therefore affirmed, and the appeal dismissed with costs.

THE 6TH MAY 1848.

No. 22 of 1846.

Appeal from the decision of Moulvee Abdool Ullee, Principal Sudder Ameen, dated the 13th July 1846.

Ramsoonder Chowdhree, (Plaintiff,) Appellant,

versus

Kashee Kumul Thakoor, Rohmut Mundul, Binda Nissoo, Gouree Paramanick, Soojai Nussoo, Sufee Akhund, Heloo Paramanick, Dulloo Mateeah, Khetoo Mateeah, Jeebun Mateeah, Gour Chowkeedar, and Obessash Mateeah, (Defendants,) Respondents.

THE appellant instituted this suit on the 29th August 1845, to recover possession of 50 beegahs of land which he alleged formed a portion of his *putnee* and was situate in mouzah Chuttra, tuppa Beas. The suit was laid at eighteen times the annual produce, together with mesne profits. Total 1,259 rupces, 4 annas, and 9½ pie.

The first respondent pleaded that the land was rent-free or *bur-mottur*, and had been granted by Ranee Bhowanee to his ancestor, and had regularly descended to him, and that he was seised of the same as *lakhiraj*. The other respondents pleaded the same, and represented themselves to be Kashee Kumul Thakoor's *ryots*. A

reference was made to the collector who reported that the land was not *lakhiraj*, and there was no trace of any *lakhiraj* land in *mouzah* Chuttra in the records of the collectorate. With advertence to the report, the principal sudder ameen held that a *sunnud* filed by the respondent Kashee Kumul Thakoor, and also a *rooka*, or letter, to the effect that the land was to be released from attachment, were not genuine, and therefore the land was liable to assessment by the plaintiff; but since both the father and grandfather of the defendant, Kashee Kumul Thakoor, had been seised and in possession of the land he did not think they (defendants) could be ejected, and therefore rejected the plaintiff's claim for possession, and saddled him with all the costs of the suit. Against this decision the appellant appeals, insisting that if the defendants' title to hold the land as *burmottur*, or *lakhiraj*, was bad, he was entitled to possession; that in an Act IV. case the magistrate had decided the land was *mdl*, and not *lakhiraj*, though he had maintained the ryots in possession, some of whom had deposed that the land was *mdl*, though they now pleaded it was *lakhiraj*. On perusal of the magistrate's (Mr. Loch's) proceeding of the 19th September 1844, I find no opinion whatever recorded. It was a very proper order adjudging that the ryots, or tenants, should be maintained in possession, and referring the parties who claimed a proprietary right in the land to the civil court. Some depositions, taken before the moonsiff of Chowgong, have also been read, in which the deponents stated they were ryots residing on the *talook* of the appellant. There can be no doubt that the respondent's, Kashee Kumul Thakoor's, title to hold the land as *lakhiraj* is bad, and unfounded; nor have the respondents appealed against this part of the principal sudder ameen's decision. The only question that remains, is, if the defendants' title under which he claims to hold the land is bad, is his occupancy of the same illegal, and must he be ousted at the suit of the plaintiff who is only a *putneedar*? The principal sudder ameen decides that he cannot, as his father and grandfather before him were in possession; and if so, that they must have been so with the knowledge and consent of the zemindar, who granted the *putnee* to the appellant so far back as 1234 B. S. Under such circumstances, the respondents *must* have been much more than twelve years in *undisturbed possession*, though the plaintiff, or appellant, asserts he was dispossessed in 1251 B. S.; and with advertence to the decision in the case of *Brijnath Baboo v. Raghunath Ojha* (vol. V., S. D. A. Reports, p. 231,) I doubt if the court, on the suit of the appellant, after the lapse of more than two years from the date of his obtaining the *putnee*, can eject any of the defendants, and deliver over possession to the appellant, which is the object of the present suit, and not to establish a *right* to assess the lands in the occupancy of the defendants. The principal sudder ameen's decision is therefore hereby affirmed, and the appeal dismissed with costs.

THE 11TH MAY 1848.

No. 1 of 1847.

Appeal from the decision of Moulvee Abdool Ullee, Principal Sudder Ameen, dated the 9th December 1846.

Ruttun Kisto Bishee, after his death, Tarasoondree Debbea and Kasheeshoree Debbea, mothers and guardians of Chundernath Bishee, a minor, (Plaintiffs,) Appellants,

versus

Captain J. H. Warner, (Defendant,) Respondent.

THIS is a suit to assess land, and to recover arrears of rent due therefrom, from the month of Pous 1242 B. S. to the month of Mang 1251 B. S. The suit is laid at 2,065 rupees, 8 pie.

The plaintiff (Ruttun Bishee) in his plaint alleged that in 1242 B. S. he took a *putnee* of dhee Newabgunge, &c. from Rajah Kishen Chund, and was seised of the same; that by the zemindar's *omlah* the defendant's *jote* was measured, and found to consist of 9 *biggahs* and 7 *cottahs*, which, at 15 rupees per *biggah* for the land occupied for houses and tenements, and 1 rupee for excavations or hollows, made the *jumma* of the land Sicca rupees 130-6-8; that in 1245 B. S. he (appellant) measured the land, when it was found to consist of 9 *biggahs* and 17 *cottahs*, and which, at the *nirick* set forth in the rajah's *nirick-nameh*, amounted to Sicca rupees 135, 13 annas. That though served with a notice, under Sections 9 and 10, Regulation V. of 1812, the defendant would not come in and take a *pottah*, and give a *kuboolent*, and had only paid the following sums:—

	Rs.	As.	P.
Rent for 1244,	22	8	0
„ 1245,	24	6	0

Total 46 14 0

leaving a large balance; and having no other remedy, he sued to recover the balance, at the above rate, from the date of his receiving the *putnee* in 1242 B. S. after deducting what had been paid with interest,—total Sicca rupees 1,800, 2 annas, 3 gundas, 3 cowries, or Company's rupees 1,920-2-3, which, together with the assessed *jumma* for one year, of Company's rupees 144-13-5, amounted in all to Company's rupees 2,065-0-8.

To this the defendant answered that there were not 9 *biggahs* and 17 *cottahs* in his *jote*, and he never paid rent for it at the *nirick* set forth in the plaint, viz. 15 rupees per *biggah*; that no notice had been served on him to pay at that rent, nor does he know any thing of the plaintiffs' *putnee*; and had a notice been served, an acknowledgment would have been given; that when Kishtoopershad held a farm of the lands from Rajah Oodwunt Singh, he had paid for

the land at the rate of 3 rupees *per biggah*, continuing to do so till the end of the farmer's lease; and when held *khas*, he had paid at the same rate, and obtained a *pottah* from the gomashdah, with the consent of the zemindars, Rajahs Kishenchund and Ramchund, in 1240, the *jumma* being fixed at 22 rupees, therefore, under Section 49, Regulation VIII. of 1793, he was not liable to an enhancement of rent; that the plaintiff's suit was wrong laid, with reference to Construction No. 1272; and that there were no hollows or excavations in his *jote*, which consisted of only 7 *biggahs* and 8 *cottahs*.

To this the plaintiff replied that neither the ijaradar or gomashdah of the zemindars had any right to grant a *pottah* of the land; that when called upon to report by the principal sudder ameen, the rajah had distinctly stated that neither his *gomashdah* or any of his *omlah* had authority to grant *pottahs*; that in the *jumma-bundee* papers and *chittahs*, given him when he took the *putnee*, the defendant's land was put down at a *jumma* of 130 Sicca rupees, 6 annas, 8 gundahs; that his demand had nothing to do with Section 49, Regulation VIII. of 1793; that from the excavations the defendant had formed his garden, and this he could prove, and also, by measurement, that he had 9 *biggahs* and 7 *cottahs* in his possession; that the defendant had made no settlement with the zemindar, and that therefore he was entitled to recover rent at the rate set forth in the *nirick-nameh*, and there was nothing irregular in the way he had laid his suit.

The principal sudder ameen, with reference to the *dakillahs* filed by the defendant, shewing that he had paid rent for the land for 17 years, at the rate of 22 rupees for the *jote per annum*, and the *pottah* granted by Bishonath Sein, the *gomashdah*, held that the rent of the *jote* could not be enhanced; and from the report of the ameen there were not 7 *biggahs* and 8 *cottahs* of land in the *jote*; but as the defendant admitted to this quantity, he decreed the rent due from Poos 1242 to Maug 1251 B. S., at the above rate of 22 rupees, together with interest, after deducting rupees 46-14, which the plaintiff acknowledged he had received, amounting in all to Company's rupees 231-7-7. Costs were adjudged in proportion, as chargeable to the defendant, and the rest to be paid by the plaintiff.

Against this decision the appellants appeal, again repeating what has been stated in the replication, and insisting they were entitled to enhance the rent, under the *nirick-nameh*, which had been admitted as proof in several suits before the moonsiff and sudder ameens; that the defendant could file no *pottah* of the *ijaradar*, or any document to shew that Rajah Oodwunt Sing had approved of the *jumma* at which the respondent had paid rent; or that Rajahs Kishenchund and Ramchund had authorized their gomashdah to give the respondent *pottahs*; and that Rajah Kishenchund had distinctly denied he had such authority; that in the *dakillahs* produced no *nirick* was stated, and they had not been authenticated. After going through

the whole of the papers, and examining the documents filed, I see no reason for disturbing the principal sudder ameen's decision. It is quite clear, and not disputed, that respondent has all along, and for many years, been in possession of the land, and for 17 years before the husband of the present appellants obtained a *putnee*; and though the *dakillahs* and *pottah* have not been authenticated, I have no reason to suspect that they are not genuine, and they shew that for 17 years the respondent paid at the rate of 22 rupees *per annum* for the land in his possession, and which, in the *pottah*, was stated to be 7 *biggahs* and 8 *cottahs*, liable to an increase of rent (at the same rate) if on measurement it was proved to be more. This *pottah* was given in 1240 B. S., and though the zemindar may not have confirmed it, there is the *dakillah* of 1241 B. S., given by the gomashdah, in confirmation of it, and which he indubitably was authorized by the zemindar to give, and his repudiation of all *pottahs* given by his *omlah*, after the *putnee* granted to the appellant, does not give the appellant any right to enhance the rent of land, held at a fixed rent, or *jumma*, more than twelve years before the *putnee* was granted to him, and with the full knowledge, it may be presumed, of the proprietors. Had the appellant even purchased the land at a revenue sale, under Clause 4, Section 26, Act I. of 1845, (enacted the same year that this suit was instituted,) the appellant could not have enhanced the rent of the respondent's land, assigned or leased to him for a garden, at a fair rent, and continued to be used for that purpose to this day. The principal sudder ameen's decision is therefore hereby affirmed, and the appeal dismissed with costs.

THE 15TH MAY 1848.

No. 154 of 1846.

Appeal from the decision of Hurmohun Newgee, Acting Moonsiff of Bauleah, dated the 17th November 1846.

Goohee Peadah, (Defendant,) Appellant,

versus

Mr. S. Nation, (Plaintiff,) Respondent.

THIS suit was instituted by the respondent to recover from the appellant 28 rupees, 3 annas, 7 pie, due under a *rooka*, or promissory note, given by the latter to him on the 8th June 1846, and in which he promised and conditioned to pay the same on the 14th of the month, or seven days after. Failing to do so, this suit was brought to recover the amount, on the 23d of June; and the sudder moonsiff, after recording that the delivery of the note by the appellant was proved, and his plea of *lesion* was not, and more, was bad, from the delay in complaining in the foudary court, gave the plaintiff a decree.

Against this decision the appellant appeals, insisting that there was *lesion*, and he was obliged to sign the *rooka*, or note. After reading the evidence I concur with the moonsiff. Although the appellant's witnesses say blows were struck, both by the respondent and his servants, they do not depose that this was to compel him to sign the note. Appellant had been in the service of the respondent, and when in his service, it would seem, had purchased hides for him, and he voluntarily went to the respondent's house and demanded wages due to him: this led to an altercation, and the counter claim was brought up against him, the settlement of which was his giving the note on which this suit was lodged; and this I remark was so, *before* the foudarry complaint. Under these circumstances I see no reason for disturbing the moonsiff's decision, and dismiss the appeal.

THE 16TH MAY 1848.

Appeals from the decision of Moulvee Abdool Ullee, Principal Sudder Ameen, dated 27th February 1847.

No. 3 of 1847.

(B) Messrs. French, Hodges and Co., (Defendants,) Appellants,

versus

(A) Atsook Misser, (Plaintiff,) Respondent.

No. 4 of 1847.

(A) Atsook Misser aforesaid, (Plaintiff,) Appellant,

versus

(B) Messrs. French, Hodges and Co., Nobinchunder Goopt, Suroop Biswas, Ramkoomar Sircar, Radhanath Chanee, and Aramdee Takadgeer, (Defendants,) Respondents.

THESE appeals are both from one decision passed in a suit in which A. was plaintiff, and B defendants. A sued to recover damages on account of indigo cut and carried off by the defendants to their factory at Shampore, from 70 *bigga*hs and 8 *cotta*hs of land leased to A by Rajah Anundnath Roy in mouzah Duraile. The damages were laid at what the plants would have yielded when manufactured, calculated thus:—70 *bigga*hs 8 *cotta*hs, at 20 bundles per *bigga*h, equal to 1,408 bundles, which at 200 bundles to the maund, was equal to 7 maunds 2 scers, and this, at 200 rupees the maund, was equal to:.....rupees 1,410 0 0 deduct for manufacturing at 5 rupees per maund,..... 35 4 0

Balance, rupees 1,364 12 0

which sum the plaintiff sought to recover. The principal sudder ameen first dismissed the suit, as the claim involved one of right to the land, but on a summary appeal to this court his order was reversed, on the 22d August 1846, and the case sent back for re-investigation with reference to the Sudder Dewany Adawlut order on the petition of Furreed Kareegur and others, (Decisions for 1846, page 251.) The principal sudder ameen then gave the plaintiff a decree for rupees 877, 8 annas, for 60 biggahs of plant, at 15 bundles the biggah—taking the *minimum* of land and produce deposited to by the witnesses in support of the claim as stated for his estimate. B appeals against this decision, pleading *inter alia* that there was no evidence to support the claim, that the plaintiff A had no factory to which he could carry the plant, if he had sown it, and that the land had all along belonged to the Shampore factory, and the indigo sown and grown was on account of that factory.

A appeals on the ground of the reduction made in his claim, his wakeel pleading that no objection had been made to the quantity of land, and which from the *pottah* was 70 biggahs and 8 cottahs, therefore he was entitled to a decree for the *whole* of his claim; and in another suit B had admitted that twenty bundles *per biggah* was the produce of such indigo land. The appeal was admitted on the 19th February last, and A's wakeel was directed to produce his client, that he might be questioned on some points. He accordingly attended, and yesterday to questions put stated that the indigo he intended to manufacture at another native's factory, who had given him the use of it, he paying all expenses, and the average cost of the manufacture was five rupees per maund. B's wakeel, on being asked why the land was not mentioned in a memorandum or schedule of land given in by Mr. Abbott (the former proprietor of these factories) to the magistrate, shewing what land, and with what boundaries, had been sown with indigo in the rajah's estate, replied, there was no dispute regarding this land with the rajah. From the evidence of the plaintiff's witnesses it is clearly proved that he cultivated and sowed this land with indigo, and that B's people cut and carried it off. B does not deny the taking the indigo, and from their own witnesses this may be inferred, though they accuse A of taking some of the indigo when they protested. Their (B's) wakeel's answer does not agree with the heading to Mr. Abbott's *memorandum*, which clearly refers to *all* lands in the occupation of the factories, and grown with indigo.—Shampore being particularly named in Mr. Abbott's petition given in with the *memorandum*. It is therefore quite clear that the rajah was fully entitled to lease the land to A, and that he did so, and that the indigo sown and grown on it by A was cut and carried off by B, without a shadow of right or title to the land, and this as shewn by the former proprietor's own papers filed in the magistrate's court.

With regard to A's appeal. It remains to be decided, whether the diminution of his claim to 60 *biggahs* of plant, when he claimed for 70 *biggahs* and 8 *cottahs*, as having been cut and carried off, was an equitable reduction. As stated by A's vakeel, the defendants have never taken any exception to the quantity of land, and which they would have done had the quantity been exaggerated. All natives, when deposing to matters connected with land, give their testimony in a vague manner, more or less (*kum-o-besh*) being generally added to the statement made. After such a lapse of time (seven years) it is useless to direct a local investigation to be made, to ascertain what quantity of land was sown with indigo by A in 1248 B. S. The court must take his statement of the fact, supported as it is by the evidence, and the *pottah* being for 70 *biggahs* and 8 *cottahs* of land, it is a fair assumption that the whole was sown by him with indigo. With regard to the produce, I find in a Pubna case a planter laid his claim at 16 bundles *per biggah* (Decisions of this court for 1846, page 47,) and that was *chur* land; 15 bundles appears therefore a fair estimate for land not *chur*, or subject to inundation; and at that rate the plaintiff A is entitled to recover damages for the *whole* of the land included in his *jote*, as shewn by the *pottah*.

Under these circumstances all that remains is to order that B's appeal be dismissed with costs, and that A's appeal be decreed, and the principal sudder ameen's decision amended, and plaintiff's claim decreed for Company's rupees 1023, 9 annas (being the produce of the 70 *biggahs* and 8 *cottahs* of land at 15 bundles the *biggah*, when manufactured, according to the plaintiff's calculation,) together with interest from the 27th February 1847, the date of the principal sudder ameen's decree, with costs in proportion, and all costs of this appeal are chargeable to the respondents.

THE 26TH MAY 1848.

No. 19 of 1848.

Appeal from the decision of Sreenath Buddabagish, Moonsiff of Bora, dated the 26th January 1848.

Surroop Paramanick, (Defendant,) Appellant,

versus

Birjogobind Shah, (Plaintiff,) Respondent.)

THIS suit was instituted by the respondent to recover 28 rupees, being principal and interest of a bond given, it was alleged, by the appellant, and his brother, Ameer, deceased, on the 4th Poos 1251 B. S., to the respondent. The moonsiff first dismissed the suit, which on the appeal of the respondent was sent back for further investigation, on the 27th August last, and the moonsiff now having decreed the claim, the defendant appeals, pleading, that though

called upon to make a solemn declaration, that his claim was a just one, the plaintiff refused, and therefore the suit should have been again dismissed. I do not think so, and it being quite clear from Rumzan's deposition that the appellant, and his brother Ameer deceased, were on good terms, I have no doubt *both* joined in the bond. I therefore affirm the moonsiff's decision and dismiss the appeal.

THE 31ST MAY 1848.

No. 12 of 1847.

Appeal from the decision of Moulvee Abdool Ullee, Principal Sudder Ameen, dated the 31st May 1847.

(A) Radha Kishen Dass Choudhree, and (B) Bisseshuree Goopta, widow of Bejoykishen Dass Choudhree, deceased, and mother of Gopee Mohun Dass Choudhree, minor, (Plaintiffs,) Appellants,

versus

(C) Sushee Mookhee Goopta, after her death Luckeepreea and Suressuttee Goopta, her daughters, (D) Puddum Lochun Mullick, Radhapersonno Mullick, Tarasoondree Goopta, mother of Birjo-soonder Mullick, minor, Premsoondree and Oomasoondree Goopta, guardians of Grishchunder Mullick, minor, and Mookta Munnee Goopta, mother of Hurree Kishen Mullick, (Defendants,) Respondents.

CLAIM for possession of a 4 anna, 8 gundah, 1 cowree, 1 krant share of kishmut pergunnah Melanchee and mouzah Galimpore: suit laid at three times the *sudder jumma*, which, with *mesne* profits, amount to rupees 4,960 and 2½ pies. This suit was instituted on the 6th of May 1845, or 25th Bysack 1252 B. S., and was dismissed by the principal sudder ameen, as regards kismut Melanchee, because Radha Kishen and Rajchunder Dass, father of Bejoy Kishen, had had their names registered as proprietors on the 19th February 1810, no allusion at the time having been made to Ramhurree's share; nor had his widow or daughter offered any objection either to the registry or sale, subsequently held on the 2d September 1834, of the property on account of the decree against Rajchunder; and more, 31 years had elapsed since the death of Ramhurree aforesaid, which barred the claim under the law of limitations; and further both Rajchunder and Radha Kishen had long been in undisturbed possession long before the sale. With

respect to Galimpore, although not sold for Rajchunder's debts, but claimed under a deed of gift by Puddum Lochun, this, the principal sudder ameen records, remains to be investigated; but as the plaintiffs' claims as heirs of Ramhurree have been rejected as regards *kismut* Melanchee, their claim for this mouzah is also rejected.

The appeal was admitted on the 21st February last, and the principal sudder ameen was called upon to explain why he did not reckon the cause of action from the death of Dhunmunnee. To which he replied that the property in dispute was not alluded to in the Sudder Court's decision, and that Ramhurree had no share in the estates laying or situated in this zillah.

It is quite clear from the documents examined in this case, and admissions of the parties that Rajchunder, Ramgobind, and Ramhurree were brothers and members of an undivided Hindoo family, and jointly entitled to participate in certain estates in this and the Nuddea district as co-sharers—Ramhurree being the eldest of the three. It is also quite clear that Ramhurree died some time in 1211 B. S., leaving a widow and married daughter him surviving, the former named Gobind Munnee and the latter Dhun Munnee. It also appears that the former, being ousted of her rights in the Nuddea district, instituted a suit against the other co-sharers, and obtained a decree for her one third share in the provincial court of Calcutta; and that after her death her daughter carried on the suit in appeal before the Sudder Court, who, on the 28th May 1824, affirmed the decision of the provincial court, and declared that a deed of gift by Ramhurree of his property to Rajchunder should be set aside, and that the daughter of Ramhurree should be put in possession of what she claimed, as having belonged to her father, deceased, and which, on the plea of a deed of gift, had been withheld by Rajchunder. It is also alleged by the respondents, that Dhunmunnee became a childless widow in the year 1239 B. S., and that she herself died in the year 1249 B. S., which both parties admit. It is also clear from the above *data* that the appellants, as heirs at law of Ramhurree, could not sue till after the death of his daughter; and that their cause of action did not accrue till such time, or from the year 1249 B. S. It is also clear that the rights and interests of Rajchunder, in *kismut* purgunnah Malanchee, on account of a decree, were sold in 1241 B. S., and purchased by the respondent C., who asserts they consisted of a 9 *annas*, 15 *gundas* share; the remaining 6 *annas*, 5 *gundas*, belonging to the appellant A., the son of Ramgobind. It is alleged that the respondent D. obtained the share (now claimed by the appellants) of mouzah Galimpore, from his brother, Kishubnath Mullick, deceased, married to a daughter of Rajchunder's, who made over the same to him by deed of gift (*jotuk*) at his marriage, and of which he died seised. The assumption, on which the princi-

pal sudder ameen has dismissed the claims of the appellants, was therefore a wrong one; for whether Dhunmunnee sued or not for the estates of her father, in this district, did not matter, as regards the Hindoo law, which only gave her a life estate or interest in them, and the rights of the heirs at law, or male heirs, were not extinguished, but remained in abeyance. Her *laches* therefore cannot affect the rights of the appellant to maintain the present suit, or action, brought within three years of her death, and within 12 years of the purchase of Rajchunder's rights and interests by the respondent C. But there is a circumstance which the principal sudder ameen appears entirely to have overlooked, and ought to have been considered in the *first* instance, viz., whether *any suit at all* can be maintained by the present appellants as heirs of Ramgobind and Rajchunder, or whether they were not entirely put out of court by the proceedings of their immediate progenitors. It is a maxim of English law, and one of universal application, "that no one can take advantage of his own wrong." Now in this case it is pretty clear that Rajchunder must have fraudulently usurped, or appropriated, Ramhurree's share of the estates lying in this district, the subject of dispute in the present suit; and that Radakishen, by giving a *ladavee*, or deed of release, to Bejoykishen, the husband of Bisseshuree Goopta, *relinquished* all claim to what Bejoykishen's father, Rajchunder, had illegally and wrongfully taken possession of, *after* the death of Ramhurree, to the exclusion of his widow and daughter, which property he (it is alleged) partly made away with by deed of gift, and part was sold on account of a decree of court in payment of his (Rajchunder's) debts. The question then arises, with such palpable fraud and *covin* on the part of their progenitors, when a long adverse possession by one of them gave him a title, which, by the sale on account of the decree of court, was conveyed to the purchaser at such sale, for a *valuable* consideration, whether this established in the latter a prescriptive right to the property, and barred cognizance of the suit under Clause 3, Section 3, Regulation II. of 1805.

It is not easy to make out what title the principal sudder ameen considers to be vested in the other respondent, Puddum Lochun, as he has not recorded whether the deed of gift to his brother by Rajchunder was proved or not; and since this respondent has not appeared in this appeal, it is not possible to dispose of this part of the claim or share in mouzah Galimpore, *even* supposing the appellants to have a right of action, or that such suit can be maintained by them. The case is therefore sent back to the principal sudder ameen for re-investigation with reference to the above remarks. The value of the stamp on which the petition of appeal is written, to be returned to the appellants, and the usual order passed as regards costs.

THE 31ST MAY 1848.

No. 21 of 1847.

Appeal from the decision of Moulvee Abdool Ullee, Principal Sudder Ameen, dated 26th July 1847.

Ishur Chunder Mustofee, (Plaintiff,) Appellant,

versus

(A) Gunneshpershad Behanee, (B) Gungapershad Behanee, (C) Rughoonath Behanee, and (D) Ramchunder Muzmadar, after his death Ruttun Malla Dasseah *alias* Chundun Malla Dasseah, (Defendants,) Respondents.

THIS suit was instituted by the appellant to recover from the respondents 3,185 rupees, being principal and interest, on the sum of 2,125 rupees paid, it was alleged, by D, the plaintiff's *naib*, to Poorun Mull, deceased, for a *hoondee*, at the banking house of A, at Bauleah, of which Poorun Mull was a trustee and B and C joint trustees at the time. The *hoondee* was drawn on the house of Buldeb Dass of Calcutta, and made payable to the plaintiff, ten days after sight, and is dated the 21st Assin 1248 B. S.; and being returned dishonored, this suit was instituted to recover the sum paid for it, as stated, with interest. The suit was, however, not instituted till the 29th Bhadoon 1252 B. S., or the 13th September 1845, nearly four years after the date of the *hoondee*, and after the death of the drawer, Poorun Mull. Adverting to this, and not crediting the witnesses to the payment of the amount by D, to Poorun Mull, for the *hoondee*, of which payment there was no trace in the *kattahs*, or books of the banking house, the principal sudder ameen dismissed the suit, recording that the plaintiff had not himself deposited the sum with Poorun Mull, who granted the *hoondee*; and that the latter's heirs should, in his opinion, have been made defendants, or sued. Against this decision the plaintiff appeals, insists that the money was paid by his Naib D, to Poorun Mull, for the *hoondee*; that having discharged D, he (appellant) now sued to recover the amount so paid, and that he was entitled to a decree; and that in consequence of Poorun Mull's becoming insolvent (*dewalea*) the *hoondee* had been dishonored. On being questioned the appellant's vakeel states that the reason D had been sued was because he had been discharged from his client's employ; and that Poorun Mull was the same person alluded to in the cause of Hurrishunder Khan and another *v.* the respondents B and C in this case; and that the reason the suit had not been instituted during Poorun Mull's life time, was because he promised to refund the amount advanced to him for the *hoondee*.

It is clear that the appellant allowed four years nearly to elapse before he instituted this suit, after the death of the drawer of the bill, or *hoondee*, and made the party who obtained it, though his own *naib* at the time, a defendant, when he could have been a principal witness, and this without sufficient cause. This throws great

suspicion on the whole transaction; and after reading the evidence of the witnesses in support of the claim, I find they all reside in the Nuddea district; and that they depose they were sent to the *naib* (D) by the appellant, accompanied the former to Poorun Mull, saw the money paid to him by the naib, and the *hoondee* given in return; that they took the *hoondee* back to the appellant, and then two of them went with the *hoondee* to the banking house of Buddel Doss, to have it accepted, and who refused to accept, or pay the amount due on the *hoondee*, as advice or intimation had been received from Poorun Mull not to pay the same. After this, by desire of appellant, they took the *hoondee* back to the naib, and went again with it to Poorun Mull, who said he would settle it. In short, these witnesses depose to every thing that is essential to support the appellant's claim, and I concur with the principal sudder ameen that not much credit can be given to such evidence; more particularly as a great deal they depose to have been done might have been so by writing, and communicated through the public post, or *dak*. It will also be seen that two of the appellant's witnesses negative the reason assigned by him, in his grounds of appeal, for the *hoondee* not being paid, or dishonored; and on referring to the case of Hurrischunder Khan and another *v.* the trustees of Guneshpershad Behanee, a minor, (page 25 of the printed Decisions of this court for 1847,) I find it recorded that Poorun Mull died on the 4th Jeit 1251 B. S.; and that at his death he was a trustee of the banking house, or *kothee* of Guneshpershad Behanee, (A); and no act of insolvency was imputed to, or committed by him, up to the date of his death, or for *eighteen* months after the date the *hoondee* bears. Adverting to this fact I strongly suspect the *hoondee* to be a forgery, and that it was never presented at all to the house of Buddel Dass in Calcutta. I therefore see no reason for impugning the principal sudder ameen's decision, which is hereby affirmed, and the appeal dismissed.

THE 31ST MAY 1848.

No. 5 of 1846.

Appeal from the decision of Moulvee Abdool Ullee, Principal Sudder Ameen, dated the 26th December 1845.

(A) Hurish Chunder Khan, and (B) Kasheenath Bishee, (Plaintiffs,) Appellants,
versus
 Guneshpershad Behanee, minor, and (C) Gungapershad Behanee, and (D) Rughoonath Behanee, his trustees, (Defendants,) Respondents.

CLAIM to recover rupees 4,553, 6 annas, being the balance of sums deposited with the *kothee*, or banking house, of the minor Guneshpershad Behanee.

This case was returned by the Sudder Court on the 2d March last for further investigation, (vide Sudder Dewanny Adawlut Decisions for March, page 130,) and the usual notices having been served on the parties, the nazir has made a return that the decree obtained by the appellants having been executed in full, they have no further demand, and the respondents had also informed the peon they had amicably settled with the appellants. All that remains therefore is to strike the case out of the file.

ZILLAH RUNGPORE.

PRESENT: T. WYATT, Esq., JUDGE.

THE 15TH MAY 1848.

No. 201 of 1847.

Appeal from the decision of the Moonsiff of Kissengunge, dated 31st August 1847.

Ramlochun Sirkar, (Plaintiff,) Appellant,

versus

Luckeenath Doss, (Defendant,) Respondent.

THIS suit is instituted by the appellant for the recovery of a bond debt, dated 28th Kartick 1253 B. S., amounting to fifteen rupees, with interest of eight annas and a half, to be paid on the 30th Aghun 1253.

The defendant denies the claim *in toto*. The lower court dismissed the plaint with costs, on the supposition that it was founded on fraud, inasmuch as the alleged writer of the bond was a stranger to the district, his abode being in zillah Fureedpore, whom the plaintiff declared his inability to produce, and because the defendant's signature on the bond appeared to differ from that on the mookhtearnamah and vakalutnamah filed by him in the case.

This decision was appealed from by the plaintiff, who stated that, in having got a stranger to write the bond, he never contemplated that the defendant would not repay the loan, and that he would be called upon to produce the writer of the bond in proof of its execution by the defendant, and that he was aware of no law which forbid the employment of a stranger to write out a bond, and that, in respect to the alleged disagreement in the signature of the defendant between that affixed to his mookhtearnamah and vakalutnamah, and that contained in this bond, it could not weigh for a moment with the established evidence adduced in proof of the bond.

This case was admitted on the 23d March, and notwithstanding the issue of the customary processes, the defendant had failed to appear.

On a review of the proceedings, the bond having been sufficiently proved, the moonsiff was not justified, for the unimportant reasons assigned by him, in dismissing the plaint. His decree is, therefore, reversed; the defendant paying the amount sued for, with costs of both courts and interest thereon.

THE 16TH MAY 1848.

No. 202 of 1847.

Appeal from the decision of the Moonsiff of Borobaree, of the 8th September 1847.

Kasheeram Doss, (Defendant,) Appellant,

versus

Bojurnarain Doss, (Plaintiff,) Respondent.

THIS action was brought by the respondent, a khod-kasht ryot, for the increased assessment of a julkur, under Regulation V. of 1812, which had been leased to the defendant, an under-tenant, for five years from 1243 B. S., the lease having expired.

The defendant denied his liability to any increased jumma, as the pottah he held for the julkur, dated 20th Assar 1242, was of a fixed nature.

The moonsiff nonsuited the plaintiff, considering he could institute no suit as the defendant was his under-tenant, whom he could eject after the expiration of the lease granted to him without recourse to law, and because the mehal being a julkur, for which there was no fixed rate of assessment, a suit could not be instituted for its revision of assessment. The moonsiff, also, while he nonsuits the case, declares the defendant's pottah to be invalid.

I disapprove of the lower court's reasons for nonsuiting the plaintiff, as they do not apply and are founded in error, and I disapprove of its irregularity, while nonsuiting the case, in passing an opinion prejudicial to the defendant's title-deeds.

As I do not think the plaintiff as a khod-kasht ryot was competent to proceed against the defendant as his under-tenant, under the provisions of Regulation V. of 1812, I dismiss the plaint with costs, on this ground alone reversing the order of the moonsiff.

THE 18TH MAY 1848.

No. 17 of 1846.

Appeal from the decision of Mr. Thomas, Acting Sudder Amcen, dated the 9th December 1846.

Surbo Mungla, (Defendant, with others,) Appellant,

versus

Khemessuree Dossea, Sham Mohun Sirkar, and Chunder Mohun Sirkar, (Plaintiffs,) Respondents.

THIS suit was instituted by the respondents for the recovery of possession, with wasilat and interest thereon of certain mofussily jotes in Neezparah, of which they had stated themselves to have been dispossessed by the defendant in Assar 1230 B. S., consequent

on the defendant having purchased from one Luckeckant, the huzooree jote of the plaintiffs, sold in execution of a summary decree of the collector on 24th Falgoon 1249 B. S., and having erroneously considered the plaintiffs' jotes in question to form a part of that purchase. The suit was laid at rupees 581.

The appellant, as one of the defendants, denied the truth of the plaint, stating that she had only taken possession of what she had purchased.

The sudder ameen, on a report alone of his mohafiz, whom he had deputed to enquire into the facts of the plaint, decreed in favor of the plaintiffs with costs.

From this decision an appeal was preferred, on the grounds that a part of the purchase of the appellant was situated in Neczparah, which was stated to have been proved by witnesses; and that appellant had objected by petition to the enquiries of the officer deputed, who had colluded with the plaintiffs in framing his report, and that the said report, though acted on by the court, had not been verified on solemn declaration.

I admitted this appeal on the 24th November 1847. Since it appears that the lower court founded its decision merely on the report containing the result of the enquiries made by the mohafiz, without having sworn him to the true and faithful nature of it, as required by the regulations, the report cannot be depended upon, more especially as it has been objected to; whence I decree the appeal, reversing the order of the lower court, to which the case will be remanded for trial, it being necessary that it should summon and personally take the evidence of the witnesses as adduced in the mofussil, with any other testimony it may deem proper on the points disputed, determining the case then as may be consistent with justice.

The value of the stamp of appeal will be returned as usual.

ZILLAH SARUN.

PRESENT: H. V. HATHORN, ESQ., JUDGE.

THE 3D MAY 1848.

No. 147 of 1847.

*A Regular Appeal from a decision passed by Syed Asud Ali,
Moonsiff of Chupra, dated 20th July 1847.*

Suntour Pasee, (Defendant,) Appellant,

versus

Bhojoo Durzee, (Plaintiff,) Respondent.

CLAIM, Company's rupees 15, 2 annas, 6 pie, principal and interest of a bond dated 1st March 1846.

Plaintiff stated that defendant on the above date borrowed from		
Principal,	- - - - -	15 0 0
Interest,	- - - - -	1 4 0
		16
Paid principal and interest,	-	1
	Balance, - - - - -	15 2 6

him 15 rupees, and executed a bond, stipulating payment at the end of Kartick 1254 Fussily, that one rupee only had been paid, and the balance with interest was due.

Defendant denied the claim *in toto*, alleging that plaintiff was indebted to him for toddy, and had beat him for his importunity in demanding payment, and the bond was fabricated from motives of enmity.

The moonsiff decreed in favor of plaintiff, upon the testimony of four witnesses, who proved that the debt had been incurred and the bond duly executed in their presence.

The defendant appeals in dissatisfaction, urging that his list of witnesses was not taken, that plaintiff and witnesses were servants of the medical officer of the station, and had got up this false case against him from enmity.

I find that three subscribing witnesses, and the scribe who wrote the bond, clearly prove its authenticity, particularizing the time and place where the loan was made and the bond executed, and I see no sufficient reason for discrediting their testimony. Further, I find that appellant made no written application for the citation of witnesses in the moonsiff's court, nor does he state here on what point he desires to adduce evidence. To prove a negative would be unavailing against affirmative proof. It is also alleged that the

deed is fabricated from motives of enmity, but no sufficient cause for enmity is assigned. I regard this appeal as groundless and vexatious.

ORDERED,

That this appeal be dismissed with costs, and the decision of the moonsiff of Chupra be affirmed.

THE 12TH MAY 1848.

No. 152 of 1847.

A Regular Appeal from a decision passed by Syed Mahomed Wajid, Moonsiff of Chumparun, dated 24th July 1847.

Shaik Balla, (Plaintiff,) Appellant,

versus

J. W. Yule, Farmer, (Defendant,) Respondent.

CLAIM, for reversal of a summary award for rent passed by the deputy collector of Chumparun, on the 22d July 1846, amounting with costs to Company's rupees 49, 10 annas, 3 pie, on account of 1253 Fussily.

It appeared that J. W. Yule, the Government farmer of Raj Ramnugger, distrained for the rent of 5 beegahs of land, situated in the village of Ghorpakree, pergunnah Mujhawa, upon which plaintiff instituted a summary suit in the deputy collector's office at Chumparun to contest the right, upon the ground that the land was situated in mouza Soobya, an adjoining rent-free village belonging to Buldeo Bhartee, chela, or pupil of Rohonee Bhartee, to whom he had paid his rent in full, agreeably to the terms of his lease, at the rate of 1 rupee 12 annas per beegah, or Company's rupees 23, 6 annas per annum. The deputy collector, on the 22d July 1846, upheld the farmer's attachment for rent, observing that the boundary of the two villages had been settled by *arbitration*, and the land had been adjudged as belonging to Ghorpakree, and the receipts of the ryot for rent of land in Soobya village was no proof of not having cultivated land in Ghorpakree, and accordingly awarded Company's rupees 44, 12 annas, 3 pie, at the rate of nearly 9 rupees a beegah.

This suit has been accordingly instituted by plaintiff in the civil court, in order to cancel the above summary award.

The moonsiff of Chumparun decides that although from a return from the office of the superintendent of survey, dated 26th May 1847, it appears that the question of the disputed boundary is pending before that officer in appeal against the native deputy collector's decision, nevertheless both parties admit that the native deputy

collector's award declared the disputed land to be situated in Ghorpakree, therefore the decree of the deputy collector of Chumparun for rent upholding the attachment of defendant was correct; but as regards the amount to be paid, the claim of the farmer was excessive, and a reduced award at four rupees a beegah according to the established rates he considers would be proper, therefore, amending the deputy collector's award of rupees 44, 12 annas, 3 pie, the lower court passed a decree for the reduced sum of rupees 20, on account of 5 beegahs of land, at four rupees a beegah.

Plaintiff appeals in dissatisfaction, recapitulating the various pleas recited in his plaint against his liability for rent, urging that the land is situated in Soobya, that he has paid his rent to the "birdar" of that village, and got an acquittance, and that the decision of the moonsiff is both irregular, and based upon surmises not borne out by the facts of the case.

JUDGMENT.

This is one of five suits, Nos. 152, 153, 154, 155, and 156, on which the point at issue is the same. It will be sufficient therefore to record my opinion in one case which will be considered applicable to the rest.

The decree of the moonsiff of Chumparun is founded upon an alleged arbitration award effected by Sheodeen Doobay, the former farmer of Soobya, by which both parties agreed before the native deputy collector to abide. By this award the land in dispute is stated to have been adjudged to belong to Ghorpakree, appertaining to the defendant's farm. But neither the arbitration award referred to, nor the survey deputy collector's proceeding quoted are filed. A decree based upon a previous arbitration award not filed with the record must be considered defective. *Secondly*, the moonsiff states that both parties admit that such an award took place, and must therefore be maintained until reversed by competent authority. Here again I find no such admission on the part of appellant either in his plaint or replication. *Thirdly*, the moonsiff has fixed the rent at four rupees a beegah. But no proof has been adduced by either party, that such is in accordance with the pergunnah rates for land of a similar description. It is stated that defendant's pleader agreed to the rate thus fixed, but I have sought the record in vain for any such admission. *Fourthly*, "If a farmer sues for rent at a given rate, he is bound in the event of the claim being disputed by the tenant to show that such tenant has previously paid at the same rate, or has executed an engagement to the effect that he will pay it," (Vide Decisions of Sudder Dewanny Adawlut, for January 1848, page 43.) But in these cases no such proof has been adduced by the farmer.

For the above reasons the decision of the moonsiff, in this, and the following four cases, Nos. 153, 154, 155, and 156, is clearly based upon insufficient grounds, and is otherwise defective and irregular.

ORDERED,

That this appeal be admitted, with refund of stamp duty, and the decision of the moonsiff of Chumparun be reversed, and the case be sent back for re-trial with reference to the foregoing remarks, and a copy of this decision be filed with cases Nos. 153, 154, 155, and 156.

THE 12TH MAY 1848.

Four Regular Appeals from four decisions passed by Syed Mahomed Wajid, Moonsiff of Chumparun, dated 24th July 1847.

No. 153 of 1847.

1. Kuli Tewarry, (Plaintiff,) Appellant,

versus

J. W. Yule, (Defendant,) Respondent.

No. 154 of 1847.

2. Bulbhudur Choin, (Plaintiff,) Appellant,

versus

J. W. Yule, (Defendant,) Respondent.

No. 155 of 1847.

3. Sheik Khodabux, (Plaintiff,) Appellant,

versus

J. W. Yule, (Defendant,) Respondent.

No. 156 of 1847.

4. Sheodhur Mahtoe, (Plaintiff,) Appellant,

versus

J. W. Yule, (Defendant,) Respondent.

THE facts and circumstances of these four cases are similar to those exhibited in the appeal case No. 152 of 1847, preceding, which has been disposed of this day: the same order is therefore applicable.

ORDERED,

That the decisions of the moonsiff of Chumparun in the above four cases be also reversed, with refund of stamp duty, and the cases be sent back for re-trial with reference to the remarks recorded in case No. 152 of 1847.

THE 16TH MAY 1848.

No. 151 of 1847.

*A Regular Appeal from a decision passed by Mr. Colin McDonald,
Moonsiff of Pursa, dated 27th July 1847.*

Kunnye Dobee, Ablak Rai, Bishon Sahaye, and Jooba Rai,
(Defendants,) Appellant,

versus

Birja Rai, (Plaintiff,) Respondent.

CLAIM, for possession and registration of name as proprietor in a 5 anna 4 pie share, or one-third of mouzah Mullye, and a 4 pie share in mouzah Lursey, pergunnah Goah, by right of pre-emption. Value Company's rupees 170-4-3-5.

This suit was instituted by plaintiff on the 5th January 1847, setting forth that Durriao Sing, Sidnarain, and Kalipersha Inarain, maliks of Rampoor, had sold the above property to defendants, maliks of Turwa, on the 20th November 1846, for Company's rupees 2,400; and subsequently the sellers took from the purchasers an ikrarnamē or agreement, dated 8th December 1846, stipulating to restore possession if the purchase money was refunded by the end of 1258 Fussily. The plaintiff claims the right of purchase by paying an equal sum to the sellers, which he states he offered on the 24th November, immediately on hearing of the sale and afterwards on the 10th December to the purchasers, but both having declined to cancel the transfer, this suit is instituted in order to establish his right of purchase by pre-emption.

In the pleadings between the shafee, and the purchaser, the transfer was called an *absolute* sale, without mention of any ikrarnamē, rendering it *conditional*, but after all the pleadings had been filed the sellers filed an answer stating it to be a conditional sale. The ikrarnamē, dated 6th Poos 1254 Fussily, or 8th December 1846, is produced by the sellers, but the bill of sale is kept back by the purchasers. Plaintiffs cited nine witnesses in proof of having made an immediate claim on hearing of the sale, tulub-i-mowazibut, and also affirmation by witness, ishtishah, as required by Mahomedan law, and the purchasers cited eleven witnesses in proof of plaintiff's possessing no legal right by pre-emption, being neither a neighbour nor a partner, and only a distant relation of the sellers.

The moonsiff of Pursa considered it proved by evidence and the admission of the parties that plaintiff was a relation of the sellers, and had made an immediate demand and affirmation by witness, and, although more than a month had elapsed, that plaintiff had brought his action as soon as possible, and, rejecting the ikrarnamē, being neither registered, nor sealed, nor mentioned until after

the pleadings had been filed, regarded the transaction as an *absolute* sale, which plaintiff had fairly redeemed by right of pre-emption, and therefore passed a decree in plaintiff's favor, requiring the purchase money to be lodged in 30 days.

The purchasers and sellers appeal, (*vide* separate appeal case No. 158 of 1847,) the former urging that Ablak Rai, one of the purchasers, possessed land in Mullye, and that they had an adjoining village Gowundree, and were of the same caste as the sellers, and therefore their right of pre-emption was equal if not superior to plaintiff's right, who was neither a neighbour nor a relative of the sellers, observing that it was an *absolute* sale, and not a *conditional* sale as stated by the sellers. The sellers maintain in their separate appeal that by the terms of the *ikrarnameli* they possess the right of redeeming the property, conditionally sold, at a future period.

JUDGMENT.

It was held in appeal that the respondent has produced no proof of being a co-partner in the villages sold, nor does he assert that he holds any share in Mullye, or Lursey, nor is he stated to have any property in the adjoining villages; respondent therefore is neither "a partner in the property sold" nor "a participator in its appendages, nor a neighbour." The plea of being a *distant relative* of the sellers is insufficient, as "relationship is not considered a ground whereon to found a claim to pre-emption."

Being a partner with the sellers in ancestral property *other than the property sold* is immaterial; claims to purchase by right of pre-emption are founded on "partnership, vicinage, or contiguity of property." The right of pre-emption therefore not having been legally substantiated, it is unnecessary to enquire whether the conditions of the law in regard to *ishtishihad* and *mowazibut* have been fulfilled.

But the decree of the lower court is otherwise defective. The *ikrarnameli* filed by the sellers has been rejected as fabricated, and the bill of sale, agreeably to which the lower court has transferred certain rights to the respondent under the law of pre-emption, has not been filed. The moonsiff observes that the existence of the deed is not denied; but decrees for the transfer of landed property should not be passed by the courts on the *verbal admission* of parties, without examining the title deeds, and ascertaining their validity and the extent of interests which they convey.

This suit must therefore be returned for re-trial, with reference to the foregoing remarks.

ORDERED,

That this appeal be decreed, with refund of stamp duty, and the decision of the moonsiff of Pursa be reversed, and the case be sent back for trial *de novo*: costs to be awarded on its final adjudication.

THE 16TH MAY 1848.

No. 158 of 1847.

A Regular Appeal from a decision passed by Mr. Colin McDonald, Moonsiff of Pursa, dated 27th July.

Durriao Sing, Sidnarain Sing, and Kalipersad Narain Sing, (Defendants,) Appellants,

versus

Birja Sing, (Plaintiff,) Respondent.

THE order passed in the separate appeal case, No. 151 of 1847, is applicable to this appeal.

THE 25TH MAY 1848.

No. 157 of 1847.

A Regular Appeal from a decision passed by Mr. Colin McDonald, Moonsiff of Pursa, dated 29th July 1847.

Juydeep Suhaye, (Defendant,) Appellant,

versus

Hunsraj Mahtoe, (Plaintiff,) Respondent.

CLAIM, for replevin of distress for rent, and reversal of a summary award for rent, dated 18th January 1844.

Defendant, the peshgeedar of Balmokund, a sharer in the village of chuck Kustoorijoorhoo, pergunnah Kusmer, attached plaintiff's property for a balance of Company's rupees 15, 5 annas, stated to be due on account of rent for the last quarter of 1250 Fussily, and first instalment of 1251 Fussily. Plaintiff gave security, and instituted a summary suit to contest the demand, which suit was struck off the file for default. The plaintiff then instituted a regular suit before the moonsiff, and obtained a decree in his favor on the 16th May 1846, but which claim was nonsuited in appeal by the principal sudder ameen for having filed a supplementary plaint in the moonsiff's court. The suit is again instituted; and the moonsiff of Pursa upholds his former decision in favor of plaintiff upon the ground that defendant had not served the jumma-wasil-bakee account on the tenant, or affixed it at his usual place of residence, and plaintiff had proved by a lease from Musst. Ablaki and Kilasee, other maliks in the village, (who support his statement,) that he had cultivated and paid rent to *them* for the years in question, and did not cultivate any land in defendant's farm, and which was further substantiated by a local enquiry made by order of the lower court. The moonsiff of Pursa accordingly decreed in favor of plaintiff.

Defendant appeals, urging that in the jumma-bundee made over to him by the maliks on taking the farm, the plaintiff's name is men-

tioned in the list of ryots. This of itself is insufficient, opposed to the lease and counterpart adduced by plaintiff, and also the local enquiry made to ascertain the situation of the plaintiff's cultivation.

IT IS THEREFORE ORDERED,

That this appeal be dismissed with costs, and the decision of the moonsiff of Pursa be affirmed.

THE 25TH MAY 1848.

No. 159 of 1847.

A Regular Appeal from a decision passed by Syed Asud Ali, Moonsiff of Chupra, dated 27th July 1847.

Sheonath Bhuggut, (Defendant,) Appellant,

versus

Kedor Bhuggut, (Plaintiff,) Respondent.

CLAIM, for Company's rupees 144, 10 annas, 1 pie, on account of a bond, dated 1st Asar 1250 Fussily.

This suit was instituted on the 23d April 1847, setting forth that defendant on the above date borrowed from plaintiff Company's rupees 99, and executed a bond, stipulating to repay the amount loan, with interest, at one per cent. per mensem, on the 13th Bysack 1251 Fussily, or otherwise that he would sell him a house in Godna, pergunnah Manjee, (defining its boundaries,) in consideration of the sum advanced. The time elapsed, and the debt was not paid, nor any house transferred in lieu thereof by deed of sale. This action is accordingly brought to recover the loan with interest.

Defendant denies the debt and the execution of the bond, attributing the claim to enmity, the cause of which is not explained.

The moonsiff of Chupra decrees in favor of plaintiff the amount claimed, with interest and costs, after having duly attested the bond by the evidence of the subscribing witnesses.

Defendant appeals, repeating that it is a fabrication, observing upon the informality of the terms of contract, and an alleged contradiction between the plaintiff and witnesses's statements, the former styling it a deed of advance, and the latter a bond, admitting further that no consideration was given in their presence.

JUDGMENT.

Five subscribing witnesses have clearly proved the execution of the deed in their presence at Revelgunge at the shop of Bisheshur, and the acknowledgment of the appellant to having received the amount therein specified; and I find no sufficient reason for discrediting their evidence. Whether they call it a *deed of advance* or a *bond* is immaterial: both terms are applicable to the deed in question. Had the deed been couched in terms of a

conditional sale, their election to sue for a refund would not have been granted, (*vide* Construction No. 898,) but the bond engages to execute a separate deed of sale, transferring a house in consideration of the debt if not paid within a given time, which contract appellant having refused to perform, denying the transaction *in toto*, respondent has no other remedy than to recover his money with interest.

ORDERED,

That this appeal be dismissed with costs, and the decision of the moonsiff of Chupra be affirmed.

THE 25TH MAY 1848.

No. 160 of 1847.

A Regular Appeal from a decision passed by Syed Asud Ali, Moonsiff of Chupra, the 30th July 1847.

Koonjul Kulwar, (Defendant,) Appellant,

versus

Mirza Ghulam Inaum, (Plaintiff,) Respondent.

CLAIM, Company's rupees 58, 14 annas, on account of a bond, dated 24th Bhadoon 1252 Fussily.

Plaintiff instituted this suit on the 16th February 1847, stating that defendant on the above mentioned date had borrowed from him 50 rupees, and had executed a bond, stipulating to repay the amount, with interest at one per cent. per mensem, on the 19th Aghun 1253 Fussily, which having failed to do, this suit is brought to enforce payment.

Defendant denied the debt and the transaction *in toto*, charging one Ameenooddeen with having caused this false claim to be brought forward, because he, plaintiff, had refused to sell him the remnants of his dilapidated house; and urging that, if true, he would have signed the bond himself. In reply, plaintiff repudiates this charge of fraud, observing that defendant might easily have acquired the art of writing subsequently.

The moonsiff decided that the bond was well proved by the subscribing witnesses, and concurred in thinking that defendant may have learnt to write after the bond was executed, and that his signature to the power of attorney showed that he was still a bad scribe,—passing a decree in favor of plaintiff with costs.

The defendant appeals, repelling the moonsiff's arguments, and urging amongst other reasons that many people, who have written all their lives, write very bad hands, and therefore his defective signature is no proof of having *recently acquired* the art of writing.

JUDGMENT.

By the evidence of three witnesses including Jumyut Lal, the scribe, it is clearly proved that defendant took 50 rupees from plaintiff in their presence, and caused the bond to be executed by Jumyut Lal, who signed for defendant at his request, after defendant had touched the pen in acquiescence of his authority to the scribe to sign for him; and this mode of signing bonds is frequently resorted to in this country, even by those who are capable of writing. But independent of this, the witnesses further state that defendant took the money into his own hands, and examined it, in order to prove that the coin was all genuine. These particulars of the transaction lead to the inference that the claim is just. The simple denial of appellant and alleged conspiracy of Ameenooddeen unsupported by proof, which was invited by the lower court, is deemed insufficient.

ORDERED,

That this appeal be dismissed with costs, and the decision of the lower court be affirmed.



THE 27TH MAY 1848.

No. 132 of 1847.

A Regular Appeal from a decision passed by Syed Mahomed Wajid, Moonsiff of Chumpurun, dated 12th July 1847.

Jankee Chumar, (Defendant,) Appellant,

versus

Alexander Brown, (Plaintiff,) Respondent.

CLAIM, Company's rupees 19, 3 annas, 3 pic, on account of penalty for breach of contract in the cultivation of *indigo* in 1253 Fussily.

This is one of a series of suits (viz. Nos. 133, 134, 135, and 136,) instituted by Alexander Brown, an indigo factor of Suraha, tuppa Serona, pergunnah Mehsee, against certain ryots for breach of contract to cultivate indigo as stipulated in their respective agreements. The date and terms of contract, and names of attesting witnesses, and those cited in refutation, are in all five cases, with one exception, (No. 136,) the same *verbatim*, differing merely in regard to the quantity of land agreed to be cultivated by each, and the amount of advance alleged to have been taken.

It will be sufficient therefore to enter into the particulars of the cause of action, the proof adduced, and the manner in which the law should be applied, in one case, which will be considered applicable to all.

It appears that the factory was originally managed by Robert Tayler, the plaintiff's predecessor, who, on the 12th October 1838, took ten years' counterpart leases, viz. from 1246 to 1255 Fussily, from the defendants in these cases, to cultivate a certain quantity of land with indigo, and failing to perform their contract they were to be liable to a penalty at the rate of 12 rupees per beegah for the quantity of land so stipulated to be brought into cultivation, each receiving small advances as a consideration for executing these counterpart leases.

The said defendants, as stated by plaintiff, continued respectively to cultivate their lands until the end of 1252 Fussily, when they defaulted, and Tayler's lease also expired. Plaintiff, who purchased the rights and interests of Robert Tayler, and who (as standing in the place of the former manager by whom the advances were made) deems himself entitled to the benefits of the law for the recovery thereof, claims from the several defendants (in these five cases) the amount penalty at 12 rupees per beegah on account of 1253 Fussily, according to their several agreements.

The defendants one and all deny receiving any advances or executing any contracts for the cultivation of indigo.

The several contracts are filed by plaintiff and five witnesses cited in attestation, who, with little variation, clearly prove that they were duly executed by the contracting parties and advances taken for the first year. The defendants on the other hand cite witnesses to prove the contrary.

The moonsiff of Chumparun considers that no doubt exists in regard to the contracts having been made and the responsibility of the several defendants, who by such contracts rendered themselves liable; but is of opinion that he is precluded by Clause 4, Section 5, Regulation VI. of 1823, from awarding the penalty stated in the contracts in excess of "*three times the sum advanced*" which amended penalty he accordingly adjudges for the year 1253 Fussily, with interest and costs to the date of payment.

Both parties appeal,—plaintiff, in dissatisfaction of these reduced awards contrary to the terms of the contracts, and several defendants upon the plea of no contracts having been made, and further that the interest of Tayler in the farm purchased by Brown, ceased in 1252 Fussily.

JUDGMENT.

I am of opinion that the execution of the several contracts signed by Sheosohaye, the putwarry, on behalf of the defendants, Jankee Chumar, (defendant in this case,) and by Khushee Gope (case No. 133) by Luchmun Kulal (case No. 134) Bullee Mahto (case No. 135) and Durshun Koormee (case No. 136) are most clearly and satisfactorily proved, and further that the advances were duly taken by them as detailed in their kubooleut; and the contrary evidence

adduced by the ryots in proof of a negative, cannot controvert the direct testimony given in support of an affirmative. Respecting the amount damages to be awarded on breach of an indigo contract, the law above quoted distinctly restricts the penalty to "three times the sum advanced," which restriction is imperative; the usury laws, it may be observed, impose similar restrictions when an exorbitant rate is stipulated for on loans by creditors. The limitation fixed for breaches of indigo contracts was probably intended, in like manner, to protect the cultivators from exorbitant surcharges, when unable by *accident*, not implying fraud or dishonesty, from meeting their engagements. The lower court therefore acted legally in adjudging penalty for the year in default (1253 Fussily) at the rate of three times the sum advanced with interest to date of payment. In regard to the remaining objection, I consider that defendants, by the terms of their contracts, rendered themselves liable to the factory for the cultivation of indigo on certain lands for a stipulated period, and the plaintiff, as the purchaser of the rights and interests of the factor with whom the contracts were made, is entitled under Construction No. 565, dated 9th July 1830, to recover outstanding balances according to existing engagements. The fact of Tayler's lease of a 4 anna share in the village having expired with 1252 Fussily, is immaterial; the engagements made by cultivators with an indigo factor for the cultivation and supply of indigo from their lands, must be fulfilled whether the factor holds a farm of the village or not. Cultivators are at liberty to enter into such separate engagements for the cultivation and delivery of a certain crop, irrespective of their obligation to the proprietor or his farmer for the regular payment of land rent.

ORDERED,

That this appeal be dismissed with costs, and the decision of the moonsiff of Chumparun be affirmed.

THE 27TH MAY 1848.

Nine Regular Appeals from five decisions passed by Syed Muhomed Wajid, Moonsiff of Chumparun, dated 12th July 1847.

No. 133 of 1847.

1. Khushee Gope, (Defendant,) Appellant,

versus

Alexander Brown, (Plaintiff,) Respondent.

No. 134 of 1847.

2. Luchmun Kulal, (Defendant,) Appellant,

versus

Alexander Brown, (Plaintiff,) Respondent.

No. 135 of 1847.

3. Bullee Mahtoe, (Defendant,) Appellant,

versus

Alexander Brown, (Plaintiff,) Respondent.

No. 136 of 1847.

4. Durshun Koormee, (Defendant,) Appellant,

versus

Alexander Brown, (Plaintiff,) Respondent.

No. 139 of 1847.

5. Alexander Brown, (Defendant,) Appellant,

versus

Khushee Gope, (Plaintiff,) Respondent.

No. 140 of 1847.

6. Alexander Brown, (Defendant,) Appellant,

versus

Bullee Mahtoe, (Plaintiff,) Respondent.

No. 141 of 1847.

7. Alexander Brown, (Plaintiff,) Appellant,

versus

Durshun Koormee, (Defendant,) Respondent.

No. 142 of 1847.

8. Alexander Brown, (Plaintiff,) Appellant,

versus

Luchmun Mahtoe, (Defendant,) Respondent.

No. 143 of 1847.

9. Alexander Brown, (Plaintiff,) Appellant,

versus

Jankee Chumar, (Defendant,) Respondent.

THE above nine appeals, which are of the same nature, are dismissed, with costs payable by appellants, and the five decisions of the moonsiff of Chumparun are confirmed, for the reasons assigned in the appeal case No. 132 of 1847.

ZILLAH SHAHABAD.

PRESENT: HENRY BROWNLOW, Esq., JUDGE.

THE 2D MAY 1848.

No. 140 of 1843.

Appeal from the decision of Syed Munowur Ally, Principal Sudder Ameen, dated 11th March 1845.

Maharajah Moheshur Buksh Singh, (one of the Defendants),
Appellant,

versus

Baboo Kour Singh, (Plaintiff,) Respondent.

THIS suit was instituted by the plaintiff on the 30th August 1834, to obtain possession of 400 beegahs of land, and 141 mahoa trees standing thereon, valuing his suit at rupees 406-8-0, being three times the amount of the rent roll *plus* the worth of the trees, and the case with reference to its amount was then referred to the sudder ameen of the district for decision.

Eventually, however, i. e. after a considerable part of the evidence in the case had been taken, it was ascertained that this valuation was incorrect, and it was subsequently enhanced by a supplementary plaint to rupees 4,288, thus putting it beyond the competency of the sudder ameen to try.

The record was then returned and subsequently found its way into the principal sudder ameen's court.

That officer accordingly decided it in the plaintiff's favor on the 31st December 1839, distinctly laying down the boundaries as detailed at length in his roobakaree of that date. This order, however, was appealed to the judge, who, after visiting the spot in person, modified the decision of the lower court, and in a map of the premises drawn up by himself laid down other boundaries, and decided the case in conformity therewith on the 14th March 1843.

A special appeal was then preferred to the Sudder Dewanny Adawlut, who, on the 28th November 1843, remanded the case for re-trial, on a supposition that the judge had awarded land much in excess of what was claimed by the plaintiff.

The case hereupon was re-transferred to the principal sudder ameen, who, after determining by actual measurement, that the land,

which he had previously awarded, was only 408 beegahs, 15 biswas, 9½ dhooors, passed an order, upholding his former decision, on the 11th March 1845.

This again was brought in appeal before the officiating judge, who, on the 30th March 1846, upheld the principal sudder ameen's decision.

Another special appeal was then preferred to the Sudder Dewanny Adawlut, from whence it was remanded, on the 14th September 1847, for re-trial by the judge *himself*, in consequence of his having irregularly referred it on its original return to the principal sudder ameen, whose first judgment had not been considered defective by the Sudder Court.

The case then after going the rounds of the various tribunals for a period of nearly fourteen years, was again brought to a hearing this day.

It appears from the record that the principal sudder ameen originally decided this suit on the evidence taken before the sudder ameen, which, as a court of first jurisdiction, he ought not to have done. He was clearly bound to have sent for the witnesses himself and examined them *de novo*. His not having done so renders the whole proceedings *ab initio* void. This point has been distinctly laid down by the Sudder Court in the case of Doorga Dutt, appellant, *versus* Dirgopal Sing, respondent, to be found at page 78, vol. VII., Sudder Dewanny Reports.

The appeal is therefore decreed, and the case remanded for re-trial to the principal sudder ameen, with instructions to adopt the course now pointed out. The usual order will pass for refund of stamp value.

THE 2D MAY 1848.

No. 141 of 1843.

Appeal from the decision of Syed Munowur Ally, Principal Sudder Ameen, dated 11th March 1845.

Kurru Roy, Dabeechurn Roy, Bisnath Roy, Jalim Singh, Surnam Singh, Doobree Roy, Surdha Roy, Bukhooree Roy, Gunput Roy, Ubhee Roy, • Unmole Roy, Leknath Roy, Hunoomaun Roy, Heemoo Roy, Sumruth Roy, Moheep Roy, Pureag Roy, and Gouree Roy, (Defendants,) Appellants,

versus

Baboo Kour Sing, (Plaintiff,) Respondent.

FOR the reasons assigned in my decision of the preceding case, this also is remanded for re-trial, as connected therewith.

THE 8TH MAY 1848.

No. 24 of 1847.

Appeal from the decision of Syed Munowur Ally, Principal Sudder Ameen, dated 18th May 1847.

Muchhoo Sing, (Defendant,) Appellant,

versus

Kalleechurn Tewarree and Jugroop Roy, (Plaintiffs,) Respondents.

THIS suit was instituted by the respondents, on the 8th December 1846, for the recovery of the sum of rupees 1,522-0-3, being principal and interest on the value of the produce of a parcel of land appropriated by the appellant.

The plaint sets forth that respondents and appellant jointly held in equal shares a parcel of 51 beegahs, 10 cottahs of land in mehal Sheodeeree, the property of Government, but that, having since divided the land among themselves, respondents took possession of 34 beegahs, 6 cottahs, 15 dhoors, being two-thirds, while the other one-third, i. e. 17-3-5, was left in the occupancy of the appellant; that since this partition each party paid his rent separately and was distinctly recorded in the putwarry's books; that the appellant, however, accompanied by the other defendants, who have not appealed, assumed possession of the following parcels of land in the years specified, appertaining to the respondents' portion, and appropriated the whole of the produce, for which they have made no compensation, although they did subsequently restore the land, viz. :

In 1245,	Beegahs	24	0	0
„ 46	ditto,	12	0	0
„ 47	ditto,	9	0	0
„ 48	ditto,	9	0	0

The defendants deny having ever held any land in partnership with plaintiffs, or cultivated and appropriated the produce of any piece of land belonging to them.

The principal sudder ameen, finding it proved that the defendant (appellant) had cultivated and appropriated the produce of 24 beegahs of land belonging to the respondents in the year 1245, of 8 beegahs in 1246, of 7 beegahs in 1247, and of 5 ditto in 1248, decreed in their favor the sum of rupees 225, on the 18th May 1847.

The appeal is preferred on the ground of a total denial of the cultivation and appropriation of the produce of any portion of land pertaining to the respondents.

But in my opinion it is clear that the defendant (appellant) did cultivate and appropriate the produce of the land set forth by the principal sudder ameen in his decree. Amongst other evidence, that of

the two putwarrees is quite convincing on the matter. I therefore reject the appeal, and uphold the decision of the lower court, making all costs payable by appellant.

THE 9TH MAY 1848.

No. 29 of 1847.

Appeal from the decision of Syed Munowur Ally, Principal Sudder Ameen, dated 15th July 1847.

Baboo Pirthee Narain Sing, (Plaintiff,) Appellant,

versus

Bukhshee Rampertab Sing and Mehunder Narain, (Defendants,) Respondents.

THIS action was brought by the plaintiff (appellant) on the 28th November 1846, to obtain possession of 49 beegahs, 2 dhooors of land pertaining to mouza Chuttoopoor, pergunnah Chousah, as well as to recover rupees 100-14-2. principal and interest, as mesne proceeds of the same for the year 1254.

The plaint sets forth that mouza Chuttoopoor, containing an area of 325 beegahs, was farmed to Sheo Purshun Singh from the year 1226 to 1240, but that when the estate was under measurement, preparatory to the conclusion of a detailed settlement of it with Raja Gopaul Surn Sing, the malick, defendants, who are the proprietors of mouza Gogoura Bodh Ram Chuk, got a parcel marked off in the measurement papers of 1240 under the head of "disputed land" and soon brought an action in the criminal court for possession, whence they were referred to a civil suit; without however doing so, defendants appeared as occupants of the land under litigation when the settlement of 1243 was pending, and were considered by the deputy collector to be the *bond fide* possessors in preference to the maliks of Chuttoopoor, who were instructed to resort to the civil court for redress. Scarcely was this ordered when mouza Chuttoopoor was sold for arrears of revenue in the Fuslee year 1243, and purchased by plaintiff. The ground of action is that an old ahurree, or water course, had hitherto separated mouza Chuttoopoor from mouza Gogoura Bodh Ram Chuk, but that having been since demolished by the defendants, a dundar, or dike, stands in its place, and, running east and west, divides the two estates, Chuttoopoor being situated to the south and Gogoura to the north of it; that notwithstanding this mark, defendants have taken possession, and have been admitted to a settlement by the deputy collector, of the disputed

land, which lies on their side of the boundary and which plaintiff now claims.

Defendants answer that the land claimed by the plaintiff is situated in mouza Gogoura Bodh Ram Chuk and has never been a component part of Chuttoopoor; that when this latter mouza was under settlement in the year 1240 Bukshee Ram Pertab Singh was in jail, and the proprietors of that estate taking advantage of his absence got beegahs 47-16-16 of land, which actually pertained to mouza Gogoura, to be measured off as part and parcel of Chuttoopoor, but that defendants subsequently succeeded in getting it restored to their possession; that a period of fourteen years having expired since the year 1240, plaintiff's suit is barred by the law of limitation; that the boundary asserted by the plaintiff is not the correct one, but that a "dundar" running east and west divides the two estates, Chuttoopoor being situated to the south and Gogoura to the north of this dike; that this same boundary has been maintained in the late revenue survey, as the mark fixed in its progress stands upon the same spot.

The principal sudder ameen dismissed this suit on the 15th July 1847, remarking that the land claimed by the plaintiff belonged to Gogoura Bodh Ram Chuk and not to Chuttoopoor,—numerous documents filed in the case being referred to by him as the basis of his judgment.

The grounds of appeal are principally those upon which the original plaintiff rests, with this addition that the proceeding of the deputy collector dated the 5th April 1839 and the "doul" upon which the principal sudder ameen has chiefly founded his decision are unavailing to the respondents, inasmuch as appellant sues for possession by the reversal of the former and that the latter is not a trustworthy document, moreover that the principal sudder ameen should himself have visited the spot and determined the boundaries.

The decision of the principal sudder ameen is, in my opinion, perfectly correct and proper. The deputy collector's proceedings of the 5th April 1839, drawn up on the spot and after a personal examination of all the *pros* and *cons* that could be adduced, declared the land to form part and parcel of Gogoura Bodh Ram Chuk; and nothing has been shown by the appellant to call in question the integrity either of this document or of the "doul" of 1240, in which the land *sub lite* is also given as a component part of Gogoura. It is therefore clear to me that the plaintiff has not a shadow of right to this land; and the decision of the principal sudder ameen dismissing this suit is hereby confirmed, with all costs payable by appellant.

THE 13TH MAY 1848.

No. 25 of 1847.

Appeal from the decision of Syed Munvour Ally, Principal Sudder Ameen, dated 21st June 1847.

Musst. Joga Kour, mother and guardian of Baboo Bur Moheshur Buksh Sing, minor son, (Plaintiff,) Appellant,

versus

Baboo Bhoranath Singh and Musst. Roopraj Kour, (Defendants,) Respondents.

THIS suit was instituted by the appellant on the 16th December 1846, for the purpose of obtaining an order prohibiting the alienation of 2 annas of talooka Kythee, pergunnah Bhojepoor, by Baboo Bhoranath Singh, under the following circumstances stated in the plaint, viz. :—

That two annas of talooka Kythee is the ancestrel property of Baboo Bhoranath Singh, who had two wives ; Baboo Pirthee Paul Singh, the late husband of the plaintiff and father of her minor son, being the offspring of the first, and some daughters, issue by the second. That at the instigation of this latter person Bhoranath Singh, who has already conditionally sold his right in mouzahs Kythee Khas and Adurpali to the Doomraon Raja, also intends alienating his entire interest in the abovementioned talooka to his daughters and brothers-in-law ; by which means her minor son who is heir at law will certainly be deprived of his hereditary rights ; and that, as the Hindu law, as current in Behar, forbids the alienation of ancestrel property to the prejudice of coming heirs, plaintiff therefore sues for an order prohibiting any further disposal of the same.

In his answer the baboo asserts his power to alienate, and repudiates any right of interference on the part of the appellant, alleging that he conditionally sold a portion of the property in order to satisfy a decree on account of which the whole estate was advertized for sale.

The principal sudder ameen dismissed this case on the 21st June 1847, observing that he could find no reason for prohibiting the defendant to dispose of his property, as the conditional sale of a portion thereof to the Doomraon Raja was made for no bad purpose, being designed to pay off a decreed claim on account of which the whole estate was in jeopardy.

The grounds of appeal are similar to those assigned in the plaint, with this addition, that the proceeds of the property were enough to liquidate the amount of the decree, as well as to pay every other necessary personal expense, without recourse being had to a sale.

The wording of the principal sudder ameen's roobakaree in this case is too loose to enable me to give currency to it. If he means that

the 2 annas in mouzas Kythee Khas and Adurpah may be sold by the defendant in consequence of the necessity shown, his judgment is imperfect, as he has yet to adjudicate on the other point urged by the plaintiff, who prays for an injunction prohibiting any further alienation of the property comprised in the 2 annas of talooka Kythee, consisting of sundry villages besides.

If, on the other hand, it is intended to be ruled by the lower court that the defendant may dispose of his property, *generally*, at his own discretion, without the consent of any one, the judgment is decidedly opposed to those provisions of the Hindu law to which the property is subject; for it is distinctly laid down at page 71, vol. VI. of the *Sudder Dewanny Reports*, that "according to the law as current in Behar, the alienation by a Hindu father of immovable ancestral property without the consent of his sons, except on proof of necessity, is illegal;" and at page 73 it is added "that as the right of representation is admitted as far as the great grandson, the fact of the plaintiffs (in that case) being grandsons would make no difference in the result."

I therefore admit this appeal and remand the case for re-trial to the principal *sudder ameen*, with reference to the above remarks, and in future he is requested so to word his *roobakarees* that there may be no room to cavil at the meaning of his judgments. The usual order will pass for the refund of stamp value.

THE 13TH MAY 1848.

No. 31 of 1847.

Appeal from the decision of Syed Munowur Ally, Principal Sudder Ameen, dated 16th July 1847.

Musst. Joga Kour, mother and guardian of Bur Muheshur Buksh Singh, her minor son, (Plaintiff,) Appellant,

versus

Baboo Bhoranath Singh, (Defendant,) Respondent.

THIS suit was instituted by the plaintiff (appellant) on the 18th December 1846, in order to recover the sum of rupees 720 for the years 1252 and 1253, at 30 rupees per mensem, and to obtain an injunction from the court for a future monthly stipend at the same rate for the maintenance of herself and minor son, under the following circumstances, viz.—

That plaintiff with her son resided at the house of the defendant after the death of her husband, Baboo Pirthee Paul Singh, the father of the minor and son of the respondent, but was obliged to separate from him from the year 1252 in consequence of dissensions

between herself and his second wife; that the respondent reaps an annual profit of rupees 2,000 from a 2 annas share held by him in talooka Kythee, pergunnah Bhojepoor, after discharging the State revenue; and that as an allowance of rupees 30 per mensem would suffice to maintain herself and minor son with comfort, she accordingly sues for rupees 720 for the years 1252 and 1253 which have elapsed since her separation, and for the assignment of a prospective monthly allowance at the same rate.

Defendant answers that the plaintiff has not correctly estimated his income from his estate; that she left his house without any reason; and that he has no objection to support the plaintiff and her minor son provided they agree to live with him.

The principal sudder ameen decreed this case in favor of the plaintiff on the 16th July 1847, for the sum of rupees 103, 8 annas, and a future monthly allowance of rupees 15 upon the following grounds, viz.—

That though the defendant was under an obligation to maintain his minor grandson in consequence of the demise of his father, still that there was no evidence as to the condition in life of the plaintiff and her son; that the oral testimony tendered on the part of the litigants as to the annual produce of 2 annas of talooka Kythee was also contradictory—the witnesses of the plaintiff laying it at rupees 2,000, whilst those of the defendant allege it to be only rupees 700, after paying the Government revenue. He therefore deemed an allowance of rupees 15 per mensem to be a sufficient maintenance for the plaintiff's minor son, and accordingly decreed rupees 103, 8 annas, from the 18th December 1846, the date of plaint, to the day of decision, and a future monthly stipend of rupees 15 to the mother *for* the minor, payable by the respondent, for life.

The plaintiff appeals on the score of their being no discrepancy in the evidence of her witnesses as to the net profits derived from his estate by the respondent, which were without any variation stated to be rupees 2,000 per annum, consequently that she was entitled to a decree at the rate for which she sued; but even admitting that an allowance of rupees 15 per mensem was considered sufficient for her, the principal sudder ameen ought to have decreed it from 1252, the year from which it was solicited and not merely from the date of her action.

In appeal it was ruled that the decision of the principal sudder ameen was defective, inasmuch as no reasons whatever are assigned by him for withholding maintenance for 1252 and 1253.

I am therefore unable to say whether it was an accidental omission on his part, or whether he had legitimate grounds for refusing the request.

The award of 15 rupees also per mensem is *to* the mother *for* the son, but the plaintiff asked for maintenance both for *herself* and *son*.

In re-trying the case the principal sudder ameen will re-consider this point as well. The appeal is therefore decreed, and the case remanded for re-trial; and the usual order will pass for the refund of the stamp value.

THE 13TH MAY 1848.

No. 28 of 1847.

Appeal from the decision of Syed Munowur Ally, Principal Sudder Ameen, dated 16th July 1847.

Bhoranath Singh, (Defendant,) Appellant,

versus

Musst. Joga Kour for herself and guardian of Bur Muheshur Buksh Singh, her minor son, (Plaintiff,) Respondent.

THIS appeal and that instituted under No. 31 of 1847 have arisen from one and the same decision of the principal sudder ameen dated the 16th July 1847.

The particulars of the case and the judgment passed by the lower court are fully detailed therein, and it only remains to give an outline of the grounds upon which the defendant (appellant) appeals, which are briefly as follows:—

That the annual produce of talooka Kythee is only rupees 1,400, which is reduced to rupees 700 after paying the Government revenue, and that this small amount of course becomes less after defraying the expenses annually incurred in the management of the property, and that being scarcely enough for the appellant's own sustenance, he is unable to pay the stipend of rupees 15 per mensem, ordered by the principal sudder ameen for the maintenance of the minor.

The former case having been remanded for re-trial for the reasons assigned, this also will be returned to the principal sudder ameen with it, with the usual order as to stamps.

THE 19TH MAY 1848.

No. 34 of 1847.

Appeal from the decision of Syed Munour Ally, Principal Sudder Ameen, dated 17th August 1847.

Mr. R. Solano, (Defendant,) Appellant,

versus

Motce Loll, (Plaintiff,) and Ram Gholam Singh, (Defendant,) Respondents.

THIS suit was instituted by Motee Loll, the plaintiff, on the 26th February 1847, for the recovery of rupees 2,558-10½ from Ram Gholam Singh, agreeably to a bond executed by the latter on the 1st Bhadoor 1251, in favor of one Lalljee Opudya, who subsequently

disposed of the deed to the plaintiff, Mr. R. Solano being associated in the suit on account of his having neglected to liquidate the debt in conformity to Ram Gholam's tunkha, or assignment.

Mr. R. Solano denied having received any order to pay the jumma demandable from him for the farm he held of Ram Gholam Singh to Lalljee Opudya, in liquidation of the debt.

Ram Gholam Singh having tendered an ikbal davee for the sum of rupees 2,473-10½ principal, and rupees 389, 11½, interest and costs, total rupees 2,863-6, payable by instalments, which having been acceded to by the plaintiff, the principal sudder ameen decreed accordingly in favor of the plaintiff against Ram Gholam Singh alone on the 17th August 1847.

Mr. R. Solano appeals from this decision to recover from the respondents the sum of rupees 129-7, being the amount expended by him in the defence of a suit, from the final decree passed in which he was exonerated in consequence of Ram Gholam Singh having adjusted the plaintiff's claim and tendered an acknowledgment, in accordance with which judgment was passed against Ram Gholam alone.

No provision seems to have been made in the decree for the payment of Mr. Solano's costs, the case must therefore be remanded for re-trial.

If it is an accidental omission, the principal sudder ameen will rectify it forthwith, or if he intends that these costs should be borne by Mr. Solano himself, he will distinctly say so, and give his reasons for saddling him with them.

The appeal is therefore admitted, and the case remanded for re-trial with reference to the above remarks. - The usual order will pass for refund of stamp value.

THE 20TH MAY 1848.

No. 35 of 1847.

Appeal from the decision of Syed Munowur Ally, Principal Sudder Ameen, dated 24th August 1847,

Beharree Lall, (Plaintiff,) Appellant,

versus

Lallah Rampertab Sing and twenty-six others, (Defendants,) Respondents.

THIS suit was instituted by the plaintiff (appellant) on the 14th September 1846, to obtain possession on, and to establish a right to the settlement of mouza Kharouneah, as well as to recover the sum of rupees 933, as mesne proceeds thereof from the year 1243 to 1253 F. S.

The plaint sets forth that mouza Kharouneah was originally the property of Deen Dyal Chowbe and several others, who, upon appear-

ing to be admitted to the settlement of the entire estate in 1240, were opposed by Ram Pertab Singh, who declared himself to be a purchaser of 4 annas of it from Doomun Chowbe, and 2 annas of it from Bunse Gopal Chowbe; that to adjust this point the several claimants united in electing Doomun Dass, the putwarree of the estate, as arbitrator, who decided that the whole of this mouza was the property of Deen Dyal and his party and of their ancestors, and that Bunse Gopal and Doomun had never held a share in it, that in conformity with this award the estate was settled with Deen Dyal and Naik Chowbe, who together with the other shareholders sold it to Chintamun Opadheea for rupees 500 as per deed dated 29th January 1834, the purchaser getting his name recorded in the collectorate; that Chintamun Opadheea however sold it to the plaintiff for the same sum on the 13th April 1835, the deed being duly registered; that the plaintiff remained in possession and had paid the instalment of rent which became due in Kartick 1243 F. S., when the Board of Revenue ordered the estate to be re-settled; that Deen Dyal Chowbe and others then leagued with Ram Pertab Singh and having gained over Doomun Dass, the putwarree, who as arbitrator had adjusted their differences, prayed for the settlement which the deputy collector concluded with them and referred the plaintiff to a civil action: hence this suit.

Some of the defendants acknowledged the transfer to Chintamun Opadheea and the plaintiff to be *bonâ fide* sales; whilst others deny them and uphold the validity of Ram Pertab Singh's purchases of 4 and 2 annas in the property, under deeds dated the 10th February 1828 and 1st July 1832, adding, that mouza Kharouneah is ancestral property and that after having been temporarily settled with several individuals from time to time, another settlement was made with Deen Dyal in the year 1240 F. S., the other coparceners still keeping possession of their shares; that in the year 1243 the settlement was concluded afresh in the following proportions, viz.—

- 4 annas with Ram Chowbe, &c.
- 6 annas „ Ram Pertab Singh,
- 2 annas „ Mahawul Chowbe, &c.
- 2 annas „ Naik Chowbe,
- 2 annas „ Pursoo Ram Chowbe;

that neither plaintiff nor Chintamun Opadheea have any concern with the estate, nor was there any truth in the plea of arbitration advanced by the plaintiff.

The principal sudder ameen dismissed this case on the 24th August 1847, observing that the purchase alleged by the plaintiff was not proved, whilst the sales in favor of Ram Pertab Singh, were fully established; that the award of arbitration passed by Doomun Dass, dated the 15th April 1833, could not be relied on inasmuch as the arbitrator had only on the 10th March preceding admitted

that Doomun Chowbe and Sheo Gopal were proprietors of such portions of mouza Kharouneah as they had sold to Ram Pertab Singh.

This decision, in my opinion, is perfectly correct and proper. The manner in which the deed of sale dated the 29th January 1834 was executed is highly suspicious. The names of the twenty shareholders who are represented as selling their rights to Chintamun Opadheea are all written by Doomun Dass, the putwarree; and of the witnesses to the deed one only besides this putwarree lives in Kharouneah, and in the other deed of sale dated 13th April 1835, executed by Chintamun Opadheea in favor of the plaintiff, not one out of eleven witnesses is a resident of Kharouneah.

I can find no satisfactory proof, either, that the arbitration award was ever acted upon; and it is moreover indisputably treated as a nullity by the settlement officer on the 14th June 1836, who admitted, in the face of it, Ram Pertab Singh, to a settlement of 6 annas of the estate; nor can I allow that the plaintiff has a right to revive its validity now, after a silence of upwards of ten years.

For these reasons and for those assigned by the settlement officer in his roobakaree of the 14th June 1836, wherein he denounces the deed of Chintamun as invalid (notwithstanding its registry by himself as register of deeds,) I have no hesitation in confirming the judgment of the principal sudder ameen, which dismisses the plaintiff's suit, and in rejecting the appeal I make all costs payable by appellant.

THE 25TH MAY 1848.

No. 40 of 1847.

Appeal from the decision of Syed Munour Ally, Principal Sudder Amcen, dated 22d September 1847.

Munbodh Ram and Shewuk Ram, (Defendants,) Appellants,

versus

• Baboo Lall, (Plaintiff,) Respondent.

THIS action was brought by the plaintiff on the 8th January 1847, to recover from the defendants the sum of rupees 3,635-7, under the following circumstances, viz.—

That Deep Chund Sahoo, the ancestor of Munbodh Ram, Shewuk Ram, and Radha Ram Sahoo, had jointly a running account with the banking house of plaintiff, situated in Arrah; and that up to the 25th December 1845, they had drawn rupees 6,060-6; of this sum they refunded rupees 2,558-2, at different dates, leaving a balance of rupees 3,502-4 against them, in liquidation of which they gave plaintiff a hoondee at forty-one days' sight, upon Sheo Raj Ram, their agent in Calcutta; that this hoondee, however, was returned dishonoured; and the present suit is, consequently, brought

to recover rupees 3,502-4, principal, and rupees 133-3, interest, total rupees 3,635-7.

Munbodh Ram and Shewuk Ram answer that Deep Chund, their ancestor, died before the year 1253 F. S., and that they never had any pecuniary transactions with the plaintiff, &c. &c.

Radha Ram pleads that, having once given an order on Sheo Raj Ram, his agent in Calcutta, he cannot be made liable a second time for the same money.

The principal sudder ameen decreed this case in favour of the plaintiff, against all the defendants, on the 22d September 1847, for the entire sum claimed, to which he considered the plaintiff entitled by the evidence both of his mercantile books and his witnesses, and from the fact of all the defendants having had a joint interest in the trade, carried on with the money thus borrowed from the plaintiff's house.

The appellants seek to be exempted from the above award by denying the action in general, and by disclaiming any connection in partnership with Radha Ram in any traffic. They refer also to Radha Ram having singly signed the hoondie in favour of the plaintiff, on Sheo Raj Ram, his agent, as indicative of his individual interest only in the transaction.

The decision of the principal sudder ameen is, in my opinion, correct and proper, and I can find no reason to interfere with the same, which is hereby confirmed, the appeal being dismissed with costs.

ZILLAH SYLHET.

PRESENT: H. STAINFORTH, Esq., JUDGE.

THE 3D MAY 1848.

No. 112 of 1847.

*Appeal from the decision of Baboo Hergouree Bose, Moonsiff of
Russoolgunge, dated 29th August 1847.*

Sheik Boolaye, Sheik Kabil, and Sheik Munnoo, Appellants,

versus

Birjooram Ghose and others, Respondents.

RESPONDENTS sued for 12 rupees, the value of paddy raised by them and some resumed land in the name of Sufdur Alee, in mehal Darooshuffa on part of plots Nos. 1 and 2 of a pottah granted to them and others, by the deputy collector of Sylhet, and cut and carried off by appellants and others on the 11th Bysakh 1253.

Sheik Boolaye and Sheik Kabil resisted the claim, and alleged the land of the crop in suit to be in talooka Sheoram, No. 3, and that the crop was raised by Sheik Munnoo and Sheik Fazil, their brothers, who reaped it,—with other matter.

The moonsiff (Baboo Hergource Bose) observed that the land of the crop had been settled with respondents; that the evidence of the witnesses of respondents proved their claim, while that of appellants was, much of it, hearsay, and not free from discrepancies; and that his own local investigation, and that made by his serishtadar, had resulted in favor of respondents' statement; and on these and other grounds he decreed in respondents' favor.

Appellants now urge that the witnesses examined were not the subscribing witnesses to their deed of purchase, and therefore gave hearsay evidence; that the crop is proved to have been raised by them; and that the settlement is under appeal.

JUDGMENT.

I find that the appeal before the collector has been determined, and that the settlement of the land of the crop in suit, by his subordinate, as part of the lakhiraj tenure of Sufdur Alee, has been confirmed; and, under these circumstances, it is obvious that

appellants' plea that the land is in talooka Sheoram, and the crop therefore theirs, is untenable, and that the appeal must be dismissed.

IT IS THEREFORE ORDERED,

That the appeal be dismissed and the decree of the moonsiff affirmed with costs.

THE 4TH MAY 1848.

No. 166 of 1847.

Appeal from the decision of Baboo Rantarak Rae, Moonsiff of Hingajeeah, dated 12th August 1847.

Sahebram Mitter, Appellant,

versus

Mooris Beebee and others, Respondents.

APPELLANT sued for 147 rupees, 2 annas, 6 pie, including interest, stating that he was the gomastah of the late Gholam Hosein, zemindar, and that, to save the dignity of his master, whose estate was in arrear of revenue for 1242 B. S., from being injured by borrowing from a low person, he, appellant, under the zemindar's orders, gave a bond to Sheik Kharoo, in *his own* name for 57 rupees, and received in exchange 50 rupees, which were given to his master, and paid in as revenue: that Sheik Kharoo, the lender, Gholam Hosein, and Khadim Hosein, his son, are all dead; that Mooris Beebee, one of the heirs of his master, has repaid the lender 12 rupees in two instalments, and discharged appellant from her service, and that he, appellant, had been sued by the heirs of the lender, and a decree passed against him for rupees 145-14-2, for which, with interest, the present suit is brought.

Mooris Beebee resisted the claim, and pleaded that her late husband, Gholam Hosein, was not poor; that, had he needed money, he would have borrowed in his own name, giving a written acknowledgment for it; that appellant was formerly her gomastah, but had embezzled money, withheld accounts, and absconded, and had made up this suit in anticipation of one on the part of this respondent: and she added that, had she made any payment on account of the bond, it would have been endorsed on it and mention of it would have been made by appellant in the suit instituted by the heirs of the lender.

Appellant alleged, in his reply, that it was proved, in the suit against him, that Gholam Hosein had borrowed the money through him, and that Russik Mhara, Asadoollah, Gunesh Ram, and Asaram, witnesses named by him, had been gained over by Mooris Beebee, through Munsoor Alee Chowdree.

The moonsiff (Baboo Ramtaruk Rae) observed that appellant had brought forward four witnesses in the present suit, but that their evidence was inconsistent; that he adduced two witnesses in the suit against him by the heirs of the lender, but that their evidence did not prove his statement, but was set aside, the plea of illegal interest having been disbelieved, and a decree having been passed against him: he further observed that there were discrepancies in the evidence of these witnesses; that appellant was manager of Gholam Hosein's estate, and would have taken measures for the recovery of the amount claimed by him, had it been due, while, on the other hand, it appeared from respondents' witnesses that appellant had been discharged for embezzlement of 200 or 250 rupees, to counteract the latent claim for which this suit was deemed by the moonsiff to have been instituted: and on these and other grounds the moonsiff dismissed the suit.

Appellant now urges that his claim cannot be annulled by discrepancies in the evidence of his witnesses, seeing that it was clear, from the papers of the suit instituted by the heirs of the lender, and the stamp on which the bond is written, that the money had been borrowed, through him, by Gholam Hosein; and that the moonsiff should have taken the evidence of Ghous Alea and other persons.

JUDGMENT.

Respondents were not parties to the suit brought against appellant, by the heirs of the lender, so that the evidence taken in that case is not valid against them; and I concur with the moonsiff in deeming the evidence adduced, considered with the whole circumstances of the case, insufficient. But the investigation seems to me incomplete. I find that appellant first took out summons for the attendance of 23 witnesses, of whom four attended, after issue of a perwanah for their apprehension, and gave evidence, while five refused to acknowledge service of the process, and failed to attend, and the remainder were not found; that, subsequently, appellant presented a petition declining the evidence of four out of the five persons, who had refused to acknowledge the summons, and praying that summons might be issued against the other witnesses, who had not been found on the first occasion; that this was done, and a return made shewing that Ghous Alea and others had received the summons, and had refused to acknowledge it, and this return, made on the 11th of August, was filed with the record of the case, and the suit decided on the 12th idem, without appellant being called in to take further measures for the attendance of his witnesses. Under these circumstances I am of opinion that the suit must be remanded for further investigation.

IT IS THEREFORE ORDERED,

That the decree of the moonsiff be reversed, and the suit remanded for further investigation. The price of the stamp of the petition of appeal will be returned, and the moonsiff will pass proper orders regarding the remaining costs of this appeal.

THE 4TH MAY 1848.

No. 190 of 1847.

Appeal from the decision of Moonshee Nuzziroodeen Mahomed, Moonsiff of Parkool, dated 24th September 1847.

Waris Mahomed, Appellant,

versus

Faqueer Ghose and Perkas Ghose, Respondents.

APPELLANT sued the sons of the late Akoot Ram Ghose, under an unpaid bond, dated 9th Aghun 1241 (23d November 1834), executed by Faqueer Ghose, under security of his father, Akoot Ram, in consideration of the receipt of Sicca rupees 40, 4 annas, payable in one month, but of which only 12 rupees had been repaid, before the subscribing witnesses to the bond.

Faqueer Ghose answered, denying the transaction, and pleading that he and his father were ryuts on the estate of Gourhurree Singh, on which appellant was mundul; that his father borrowed 13 rupees from appellant, and repaid it; but that, notwithstanding, appellant had sued and obtained it a second time, and that enmity was thus generated, and that he left the estate of Gourhurree, and went to that of Gholam Hyder Chowdree in 1240 B. S., and had no further transaction with appellant.

The moonsiff (Moonshee Nuzziroodeen Mahomed) observed that three witnesses had identified the bond, though they were illiterate; that the bond was, seemingly, newly written on old paper; that Gholam Hyder Chowdree and Shuhudeb, his gomastah, had attested the pottah (i. e. for land in the estate of Gholam Hyder) dated in 1240, and three acquittances for the consequent rent on account of the years 1241, 1242, and 1243, given by the latter; and thus it appeared that respondents had gone to the estate of Gholam Hyder, before the date of the execution of the bond; and, under these circumstances, he dismissed the suit.

Appellant now urges that his claim is proved.

JUDGMENT.

Stale as appellant's claim is, it may possibly be true, but appearances are against him, and I cannot decree in his favor. The bond, which, including the names of the witnesses, is in the handwriting

of a single person, is attested by three witnesses, none of whom can read and write, but all of whom can swear to a deed executed many years before. I think that such evidence is insufficient under the circumstances of the case, and I observe that while appellant states that 12 rupees were paid in liquidation of the bond, before the subscribing witnesses to it, two out of three of these witnesses, who attended, contradicted this statement, and thus, though the original transaction declared by appellant may be true, he has mixed it with falsehood, which throws strong doubts on its reality.

IT IS ORDERED,

That the appeal be dismissed, and the decree of the moonsiff affirmed with costs.

THE 5TH MAY 1848.

No. 200 of 1847.

Appeal from the decision of Baboo Ramtaruk Rai, Moonsiff of Hingajeeah, dated 24th September 1847.

Bulram Shah, Appellant,

versus

Kishun Cherrun and others, Respondents.

RESPONDENTS sued for Sicca rupees 28, annas 14, or Company's rupees 30, annas 13, pie 4, rent of 5 kear 1 pao of land in the burmooter tenure in the names of Jyekishun-Burut Ram, in kitta Elaichpoor *alias* Bunundee Beel, in mouzah Kishenpoor of pergunnah Lunglah, stating that appellant took the land from 1242 B. S., and paid the rent of that year, but withheld it subsequently; hence the present suit for rent from 1243 to 1253, interest being foregone.

Appellant answered, alleging that Kumlakant Surmah, husband of Urnopoorna, respondent, borrowed 22 Sicca rupees, 8 annas from him, on the 16th Bysakh 1237 B. S., and gave him a farming lease of 4 kear of land, measured by the null, or measuring rod, of the decennial settlement, and situated in mouzah Shunman, of talooka Rajbullubh Pundit, No. 88, under agreement that no claim of interest should lie against Kumlakant, or of mesne profits, on the part of Kumlakant, against appellant, and that the land should be relinquished when the principal sum borrowed was repaid; that Kumlakant died, without repaying the loan, and that Bishnath (respondent) had caused the land to be measured as lakhiraj, or

rent-free land, in mouzah Kishunpoor, but that the land is in appellant's possession and usufructuary enjoyment.

Respondents urged, in reply, that appellant caused the land to be measured as lakhiraj, and himself to be recorded as jotedar, or tenant of it, and further admitted, before several persons, that he was merely an ordinary tenant.

The moonsiff (Bahoo Ramtaruk Rai) states in his decree that respondents' claim is established by the evidence of their witnesses and the papers of the measurement effected by the putwaree; that appellant petitioned, on the 12th March (1847), that three months should be allowed to enable him to obtain an additional stamp to his farming lease, which was on the inadequate stamp of two annas; but that he had not filed it, though more than six months had elapsed; that the deed of lease was not germane to the matter at issue; seeing that it referred to land of a settled talooka, while the land in suit was lakhiraj; that the lease by Kumlakant, who was not sole owner, was invalid: and on these grounds he decreed the claim.

Appellant now urges that respondents have instituted the present suit to get rid of appellant's right to recover the sum advanced by him; that his evidence has not been taken; that a local investigation should be made of the sums collected during the lease; and that he had recovered the deed of lease from the collector's office, and was about to file it before the moonsiff, but found the suit decided.

JUDGMENT.

Appellant's defence rests on the deed of lease, the adduction of which was necessary to prove the lease. On the 12th of March 1847, he applied for postponement of the case for three months, in order that he might effect its legalization by an additional stamp. This indulgence having been conceded, he was bound to use due diligence in legalizing the instrument. I find, however, from the collector's report, forwarded at the requisition of this court, that the deed was not lodged in his office for the purpose of being re-stamped before the 10th of June, *i. e.* till within two days of the expiration of the time allowed him to file it, legally stamped, in the moonsiff's court; and that, consequently, the deed was not returned from the superintendent of stamps to the collector before the 30th August; and I conceive that such negligence on the part of appellant has left him no ground of claim for further indulgence, and that his defence must be held to have failed; and the evidence of respondents' witnesses being un rebutted, and their claim fully borne out,

IT IS ORDERED,

That the appeal be dismissed, and the decree of the moonsiff affirmed with costs.

THE 9TH MAY 1848.

No. 2 of 1847.

*Appeal from the decree of Radhagobind Shome, late Principal
Sudder Ameen of Sylhet, dated 11th February 1847*

Mahomed Kayum and others, Appellants,

versus

Mahomed Hussun, Respondent.

RESPONDENT sued for possession with mesne profits of 10 koolbas of land, *cheraghee*, in the name of Aboonusser, given to him by his aunt, Hafeeza Beebee, widow of Aboonusser, (from whom she had received it in dower,) stating that Mahomed Mokeem (sued) gave him a tahooddaree kubooleut, collected, and continued to pay the rent, but that, in Bysakh 1250, Mahomed Shurruf, Mahomed Kayum, the said Mahomed Mokeem, and 132 other persons sued, dispossessed him.

Mahomed Kayum and Mahomed Shurruff resisted the claim, declaring the land to be their maternal property, and asserting that their father, Mahomed Nazim, caused it to be measured, at the time of the decennial settlement, as *cheraghee*, in the name of Aboonusser, with whom he was on terms of friendship, in order to evade assessment, but that neither Aboonusser nor respondent has ever had possession, which has been successively held by their mother, their father, and themselves; that they and a person who has purchased part of it were recorded as proprietors in the measurement which took place in 1246 and 1247, (preliminarily to resumption of the tenure,) and that a settlement has been made of 10 koolbas, 7 kear, 3 jet, 10 pun with them, and of 7 koolbas, 6 jet, 2 reg, 2 pun with the heirs of the said purchaser; that respondent presented a petition, in the settlement case, alleging that the land of the cheraghee tenure was comprised in two parcels, i. e. 8 koolbas in kitta Futeeka, and 2 koolbas in kitta Bareekandee, while his father, Mahomed Salim, presented one, alleging the land to be in *three* parcels, i. e. 4 koolbas in kitta Futeeka, 3 koolbas in Barceekandee, and 3 koolbas in kitta Bhowalia; and stating moreover that no rent had been paid since 1240 B. S.; that, in these petitions, there is no mention of the gift or of respondent having received rent prior to 1250; that Mahomed Mokeem, who has been sued with them, is their enemy; and that respondents have sued other persons, who are wholly unconnected with the case, merely that they may be prevented from giving evidence in it,—with other immaterial matter.

Dervesh Mahomed and Sheik Boodhoo, heirs of Mahomed Summee, purchaser from Mahomed Kayum and Mahomed Shurruff, filled an answer in support of those persons, and alleging that

Sheik Bidaye, their brother, who is in joint possession with them, should have been sued conjointly with them.

Noorjan Beebee, Wuzeer Beebee, Sheik Purdesec, Shere Mahomed, Sheik Jharoo, Tareenee Dasee, Gournundee *alias* Gouree Chur, Nundee, Domenee Beebee, Sheik Nujoo *alias* Nujuroodeen, Sheik Wuzeer, Ayna Beebee, Mayna Beebee, Mahomed Alec, and Leydoo *alias* Mahomed Aser, filed nine answers disclaiming right to the land and possession of it, Noorjan Beebee, Wuzeer, and Sheik Jhoroo declaring it to belong to Mahomed Kayum and Mahomed Shurruff.

Respondent filed five replies, in which he states that a *dowl-chukbundee* 'registered with the cazee's seal,' and other documents, are forthcoming to shew the land to have been the property of Aboonussur; that, had it been the maternal property of Mahomed Kayum and Mahomed Shurruff, some deed of acknowledgment to that effect would have been taken from Aboonussur; that, in truth, Hafiza Beebee received it in dower and gave it, on the 22nd Sawun 1232, with possession, to respondent; that, if his mooktar presented a petition not mentioning the deed of gift, and containing error on one or two points, his doing so cannot prejudice respondent's rights; that the land lies in the three parcels described in the plaint; and that an appeal is pending against the settlement made with Mahomed Kayum.

Sheik Bidaye filed a petition in support of Durvesh Mahomed, &c.

Abdool Ayas Mahomed Ahmud filed a petition, declaring himself son of Aboonasir, brother of Aboonussur, and alleging that, on the death of the latter without issue, his father was in possession of $\frac{9}{16}$ ths the land in his own right, and of $\frac{6}{16}$ ths as heir of his brother, and $\frac{2}{16}$ ths as the right of Hafiza Beebee, whom he supported, and he asked how Hafiza Beebee, who was entitled to only $\frac{2}{16}$ ths of the land, could alienate the whole of it—and, in another petition, he alleged that Hafiza Beebee had been inadvertently described by her mohurris, owner of $\frac{2}{16}$ ths of the land, and that she was really only entitled to $\frac{1}{16}$ th of it.

The late principal sudder ameen, Rai Radhagobind Shome, observed in tenor that the defendants had produced no deed, shewing the land to have been the property of the mother, or held clandestinely (as cheragee); that what they had exhibited as errors (of respondent) is misrepresentation on their part; that respondent has *ab initio* objected to the pottahs granted to Mahomed Kayum and others, and the settlement is the subject of an appeal pending before the collector; that the boundaries in the dowl filed by respondent agree with those quoted in the plaint; that the deed of gift, dated 22d Sawun 1232, the kubooleut of Mahomed Mokeem, and the claim, are proved in evidence; that the investigation by Jugurnath Dusteedar, ameen, verified the possession and

dispossession averred by respondent; and that the investigation made by the cazee, being *ex parte*, was not to be preferred to that of Jugurnath Dusteedar: and on these and other grounds he decreed against Mahomed Kayum and Noorjan Beebee, his wife, and Mahomed Shurruff and Wuzeer Beebee, his wife, ordering that the other persons who defended the case should, as they supported the persons now made liable as principals, defray their own costs, and providing that the rights of oozurdars should not be prejudiced.

Mahomud Kayum and Mahomud Shurruf, appellants, now urge that the dowl filed by respondents is not proved; that the stamp on which the deed of gift is written was purchased upwards of two years before the date of the deed; that Chundeebershaud and Tajoodeen, who have attested it, are witnesses in numerous cases, living at the distance of a day's journey, and that the name of the former appears newly written on the deed; that had the gift been true, it would have been mentioned by respondent and his father in the settlement case, but that, contrarily, respondent's father claimed the land as his heritage; that subsequently respondent's mookhtar had declared the deed to have been burnt, but that, notwithstanding, it had been produced; that, while respondent's father was moonsiff of Russoolgunge, the suit of Boolchund Das *versus* Mahomed Kayum, &c. was sent by him to the judge, on the ground of its involving land which was his heritage, appertaining to the estate of Aboonussur; that their statement is proved by the investigation of the cazee, who was chosen as ameen by the parties; that respondent and his father asserted, in the settlement case, that the dispossession took place in 1240, while the plaint of the present suit exhibits 1250 as the year of dispossession; that Mahomed Mokeem is their foe, and that his kubooleut can only be false; and that the appeal against the settlement has been decided against respondent. And Noorjan Beebee and Wuzeer Beebee, object that they are not proved to be in possession of the land, they have still been made liable; and the other appellants urge that they have, in contravention of the ordinary practice, been disallowed their costs.

Respondent has filed an answer to the grounds of appeal, in which he alleges that Chundeebershad, one of the witnesses who has attested the deed of gift, was gomashlah of Hafiza Beebee, while the other, Tajoodeen, always lived in Sylhet; that Mahomed Mokeem at one time withheld the rent from 1240, but subsequently paid it under fear of being sued,—with other immaterial matter.

JUDGMENT.

The parties agree in saying that the land in suit has been hitherto held as chiragee in the name of Aboonussur. On the one hand, respondent states that his aunt, Hafiza Beebee, received it

as dower from her husband, Aboonussur, and bestowed it on *him*, under a deed of gift, dated 22d Sawun 1232, delivering possession, which was held by him till Bysakh 1250, when he was dispossessed : but, on the other hand, Mahomed Kayum and Mahomed Shurruff assert that the land was originally the property of their mother ; and that their father caused it to be measured at the time of the decennial settlement as chiragee land, in the name of his friend, Aboonussur, in order to evade the payment of revenue ; and that possession has been held continuously from that time by their parents or themselves, respondent exercising no interference with it.

Respondent has filed a deed, dated 14th Phalgun 1195, called a *dowl*, which is in fact a deed of alienation of the land in suit, by Mahomed Nazim and others, in favor of Aboonussur. This deed is stated in the plaint to be “ registered with the seal of the cazee ;” but all that the cazee appears to have done is to certify, under his seal, *without his signature*, that a copy which he made of it agreed with the original ; moreover, it does not appear to have been adduced in any public office, previously to the present suit, and is not proved, so that it is only good, in evidence, as an acknowledgment that Mahomed Nazim, the father of Mahomed Kayum and Mahomed Shurruff, once had proprietary right in the land in litigation.

Respondent has also filed his deed of gift, dated 22d Sawun 1232. This deed appears to me open to suspicion on many grounds : 1st, the land is situated in pergunnah Khalisha Bhunbag, and the donor and donee reside in the kusbah of Sylhet, while the only two witnesses, who are adduced as sponsors to the gift, appear from it to have lived, one of them, Chundeeershah Kur, in mouzah Kushkalceka, of pergunnah Eechakullus, and the other, Tajoodeen, in mouzah Alapoor, of pergunnah Ghurpoor. True it is that respondent now alleges, in his answer to the grounds of appeal, that Chundeeershah was gomashta of Hafiza Beebee, and that Tajoodeen lived at the time at Sylhet, but this is not proved. However, taking Chundeeershah to have been the gomashta of Hafiza Beebee, and Tajoodeen to have resided, as he first deposed, at *her* house, or, as he subsequently stated, at the house of Mahomed Hatim, the *brother* of Mahomed Salim, some more independent and far stronger evidence than the testimony of these two persons is necessary, under the circumstances of the case, to induce belief in the deed of gift ; 2dly, I find that, on the 7th Sawun 1246 (22nd July 1839,) Mahomed Salim, father of respondent, the moonsiff of Russoolgunge, transmitted, to this court, the suit of Boolchund Das *versus* Mahomed Kayum, Mahomed Shurruff, &c. for land declared by those defendants to be in part the land of the tenure now in suit, on the ground that it involved property in the said tenure the heritage of himself and the children of Aboonassur, without mak-

ing any mention of the deed of gift in favor of his son, though the said deed of gift sets forth that respondent was, at the time of the gift, a minor, and that his father, present among the persons assembled on the occasion, accepted it on his behalf; 3rdly, I find that the said Mahomed Salim presented a petition to the special deputy collector of Sylhet, dated 5th Poos 1247, asserting the land in suit to be his inheritance from Hafiza Beebee, without any mention of the gift in favor of his son; 4thly, I find that respondent presented a petition to the deputy collector of Sylhet, dated 21st Aghun 1249, in which, though he asserted gift from his aunt, he made no mention of the existence of the deed of gift; 5thly, I find that Rajkishun Das, respondent's mooktar, stated before the deputy collector of Sylhet, on the 4th Sawun 1250, signing his statement when reduced to writing, that the deed of gift had been burnt 15 or 16 years previously, but notwithstanding all this, the deed is brought into court, bearing a stamp purchased more than 2½ years previously to its date, signed at the joinings on the back by this same Rajkishun, and respondent wishes me to put faith in it, which, under the circumstances detailed, I cannot do.

Respondent has also filed a kubooleut by Mahomed Mokeem for the rent of the land in suit, dated 11th Phalagoon 1241, and Mahomed Mokeem has been sued as acting in concert with Mahomed Kayum and Mahomed Shurruff. In relation to this I find that Mahomed Mokeem has not only filed no answer in denial of the kubooleut and resistance of respondent's claim, but actually admitted the kubooleut on the 5th Sawun 1251, before Moolook Amud, ameen deputed by the deputy collector of Sylhet, and again, on the 8th of Chyt 1251, before Jugurnath Dusteedar, ameen deputed by the sudder ameen, which admissions, instead of indicating confederacy with Mahomed Kayum and Mahomed Shurruff, are strongly significant of collusion with respondent. Again, I cannot forget that the suit, in which Mahomed Kayum, Mahomed Shurruff, &c. were appellants, and Mahomed Mokeem was respondent, decided by this court on the 19th December 1846, shews that parties named, instead of being friends, are at variance concerning land; and again, the deposition of Moonshee Bholanath Deb, vaqueel of Mahomed Salim and others, taken on an enquiry made at the instance of Meherchand Banoo and others, co-plaintiffs in that case with Mahomed Salim, into the conduct of Moonshee Gholam Mehdec, late a vaqueel of this court, it transpired that Mahomed Mokeem is the agent of Mahomed Salim; and, on these grounds, it is clear to me, that Mahomed Mokeem has not been acting with Mahomed Kayum and Mahomed Shurruff, but has been sued fraudulently, in order that he might support respondent's claim; and that his kubooleut has been fabricated with the same object. But there are other grounds for deeming the kubooleut fraudulent.

Mahomed Salim, in his petition of the 5th Pous 1247, already quoted, asserted that the rent had been withheld since 1240, and respondent, in his petition of the 21st Aghun 1249, also cited, stated the rent to have been paid up to 1245, while in his plaint in the present suit, he states it to have been withheld from 1250. The discrepancy between Mahomed Salim's statement and the plaint is noticed in the grounds of appeal, and respondent, in the hope of reconciling it, has alleged that Mahomed Mokeem did withhold the rent from 1240; but subsequently paid it to the end of 1249, in fear of being sued. This allegation, however, appears to me palpably false:—1st, had this payment been made it would have been set forth in the plaint as strengthening respondent's case, instead of being now brought forward for the first time when the discrepancy was detected; 2ndly, the numerous witnesses adduced would have mentioned it, instead of saying nothing about it; 3rdly, though not distinctly expressing it, the tenor of the plaint leads to the supposition that the rent was paid yearly to the end of 1249; 4thly, Mahomed Mokeem, whom I have already shewn to be acting in collusion with respondent, has, in his deposition before the ameen, Modookchund, in Sawun 1250, distinctly indicated that he paid the rent regularly; 5thly, it is very strange that the fear of being sued, which was potent to cause payment of the rent from 1240 to 1249, a period of ten years, should be impotent to compel payment for 1250, the present suit being instituted in 1251; 6thly, if it be true that Mahomed Mokeem was at variance with respondent, withholding the rent from 1240 to 1249, how comes it that the kubooleut is dated in 1241, and how comes it that a respondent, in his petition quoted, stated that the rent to have been paid up to 1245? Clearly, under these considerations, the kubooleut can only be viewed as a fraudulent document, fabricated with intent that it might serve to uphold respondent's declaration of possession up to the end of 1249, a declaration which, appellants state, numerous persons (135) besides themselves and Mahomed Mokeem have been sued that they might not be called to contradict. Instead of having this effect, it has the reverse. So much fraud as has been disclosed leads me to set aside the results of the investigation of Jugurnath Dusteedar, ameen, contradicted by the petitions of Mahomed Salim and respondent already quoted, and shewing respondent's possession up to 1250, and to rely on the investigation of Cazeer Mahomed Eusuf, shewing that appellants and their parents have continuously held possession of the land in suit since the time of the decennial settlement; an investigation which, I observe, is stated by Baboo Ramguttay Rae, the deputy collector of Sylhet, to agree with those made personally by him and two ameens deputed from the collectorate.

I have now shewn why I have come to the conclusion that respondent's deed of gift is not proved, that the kubooleut of Mahomed Mokeem is fraudulent, and that possession by respondent of the land in suit is fabulous ; and I need not stop to comment on the conduct of the late principal sudder ameen, who has been dismissed from the public service, but, observing that respondent's claim could only rest in proof of his deed of gift and concomitant possession, or on long possession alone, and that both these points have been decided against him,

IT IS ORDERED,

That the decree of the late principal sudder ameen be reversed, and the suit dismissed, respondent paying his own and appellants' costs in both costs.

THE 11TH MAY 1848.

No. 172 of 1847.

Appeal from the decision of Baboo Hergouree Bose, Moonsiff of Russoolgunge, dated 24th August 1847.

Ramkishun Deb, Appellant,

versus

Jugcecwun Deb *alias* Jewunram Deb, Respondent.

RESPONDENT declared himself servant of Mirtunjee Dam, under a lease, dated 32d Jeit 1249, at the yearly rent of 14 rupees ; that he had tendered the rent for 1252 B. S., but that it had been refused by his landlord in collusion with appellant, who had caused his property to be brought to sale by the local commissioner, under a pretended right to the rent for 1252, thereby extorting from him 18 rupees, 14 annas, on the 5th Phalgun 1252, to recover which, with interest, this suit was instituted on the 5th Phalgun 1253.

Appellant asserted himself to be tahooddar, or lease holder, from Mirtunjee Dam and Jyckishun Aysh, with power to collect the rent of the land under a deed of lease, dated 21st Magh 1252, in virtue of which he realized the rent due from respondent, who was tenant at 18 rupees yearly.

The moonsiff (Baboo Hergouree Bose) held respondent's statement fully established by the evidence of his witnesses, and, observing that appellant was not entitled to exercise the powers conferred by Regulation V. of 1812, under the terms of his lease, which was on unstamped paper, he decreed against appellant.

Appellant now urges that respondent did not dispute that Mirtunjee Dam and Jyckishun Aysh were the proprietors of the land, and had admitted being tenant in 1252, and that he, appellant, was entitled to the rent under his lease.

JUDGMENT.

Respondent is proved to be cultivating tenant under lease from Mirtunjee Dam, on the yearly rent of 14 rupees, and to have been compelled to pay appellant 18 rupees, 14 annas, under distraint for rent for 1252. Appellant, on the other hand, asserts written authority from the proprietors of the land to realize from respondent, but to prove this he should have adduced and proved the deed of lease under which he alleges himself to have acted, as the best evidence of his power. This deed has not been adduced, nor has any desire been expressed that it should be. It is filed in a summary suit for the rent of 1253, and it is on plain paper, though it recognizes appellant as a middle man, and, to be legal, should bear a stamp; the deed then and the evidence to its execution are inadmissible and void; and, as respondent's statement is fully borne out, the decree of the moonsiff appears to me just and proper.

IT IS THEREFORE ORDERED,

That the appeal be dismissed, and the decree of the moonsiff affirmed with costs, and that Jykishun Aysh, who was sued, and who, if he was dissatisfied with the moonsiff's decision, should have appealed regularly, do bear his own costs.

THE 12TH MAY 1848.

No. 164 of 1847.

Appeal from the decision of Moonshee Chytun Churrun, Moonsiff of Lushkerpore, dated 11th August 1847.

Sheik Amanoollah, Appellant,

versus

Roghoonath Surmah, Respondent.

RESPONDENT sued for 30 rupees, 0 anna, 9 pies rent, including interest, stating that appellant and others tenanted 3 kear 1 pao of land, the undivided property of himself and Bishnath Surmah, his partner, in the *kharija* of Ramkant and Jyram in talooka Inayut-oollah, No. 3, of pergunnah Turruf, under agreement to pay 9 Sicca rupees, 6 annas, 10 gundahs yearly; that they held it from 1242 to 1244, but did not pay respondent his share of the rent; that though the talooka was sold in realization of arrears of revenue for 1244, still he, respondent, was entitled to the rent up to the time of sale, and hence his present claim for 14 Sicca rupees, 1 anna, 15 gundahs, his share of 28 Sicca rupees, 3 annas, 10 gundahs rent for the said years, with interest, in all 30 Company's rupee, 0 anna, 9 pies.

Appellant and Sheik Yaseen admitted cultivating the land, and pleaded that the yearly rent was six rupees; that the rent for 1242

was paid in two instalments to respondent and Bishnath Surmah; that, after the sale of the talooka in Bhadoor 1244, the ameen, who was deputed to transfer the possession of it, confined respondent and Bishnath, demanding the rent of the land and its cultivators; that appellant paid six rupees on account of 1243 B. S., and three rupees, half the rent for 1244, in Asar 1245, to respondent and his brother, who would not give an acquittance on plea of there being other land in defendant's tenancy; that large sums are due from respondent under deeds, and that, had rent been due, it might have credited in payment of these sums; and that respondent has made up this suit to evade their payment.

The moonsiff (Moonshee Chytun Churrun Das) observed that respondent's witnesses did not prove the amount of rent declared by him, there being discrepancies in their evidence; that appellant, &c. have, in like manner, not fully established payment of the rent, their witnesses being low in life and partial in their evidence, while, though allowed ample time, they have failed to produce their remaining witnesses; and that, under such circumstances, respondent is, under the defendant's admission, "that the auction purchaser had, subsequently to 1244, received the rent from them through the ameen," entitled to receive the rent for the whole of 1244, and, six rupees being the yearly rent, 18 rupees is the rent for the three years quoted, of which half is due to respondent with interest, from appellant and Sheik Yaseen, seeing that the suit was within time, and that defendants had produced no document in proof of payment, which they would certainly have possessed had they paid subsequently to the sale of the talooka: and on these and other grounds he decreed payment, by appellant and Sheik Yaseen, of nine rupees with interest and costs in proportion.

Appellant now urges that his witnesses are not low fellows; that their evidence has proved his defence; and that, had rent been due, it would have been claimed before expiration of 11 years, and respondent would not have caused him to give the auction purchaser a *ku-booleut* without previously realizing his due; that the rent was paid before persons of respectability, and that he did not take an acquittance because the land had become the property of another, &c. &c.

JUDGMENT.

Respondent was bound to insert in his plaint whatever was necessary to the elucidation of his claim; and as he claimed rent up to the date of the auction sale, it was necessary for him to specify that date, in order to enable the court to see that the claim did not extend beyond it; but he did not declare the date either in his plaint or reply; moreover I find, from a return made by the collector, that the claim does extend beyond the date of sale, the claim being for the whole rent for 1244, and the sale having taken place on the 16th Bhadoon, *e. i.* in the middle of the 5th month of that year, a cir-

cumstance which leads to the supposition that the omission was not accidental but premeditated, and I am of opinion that respondent should be nonsuited.

IT IS THEREFORE ORDERED,

That the decree of the moonsiff be reversed, and that respondent be nonsuited with all costs.

THE 15TH MAY 1848.

No. 147 of 1847.

*Appeal from the decision of Baboo Russiklall Ghose, Officiating
Moonsiff of Sonamgunge, dated 26th June 1847.*

Joogul Rai, Appellant,

versus

Sheik Saheboodeen, Respondent.

RESPONDENT sued for Company's rupees 69, annas 6, pie 0, *i. e.* thrice 23 rupees, 2 annas, 6 pie, the amount illegally realized from him, on the 25th Phalgun 1252, by appellant and others under pretended claim of rent.

Appellant denied participation in the exaction of the money or appropriation of it, and stated that respondent cultivated none of his land, and that he had been sued at the instance of one Soonderam and others.

The officiating moonsiff, Baboo Russiklall Ghose, held the claim proved, and decreed against appellant and others.

Appellant now urges that he was under arrest by the criminal court from Poos, and had left no agent at his house; that the penalty was in excess of that allowed by the law; that respondent's statement shewed that he himself did not attach the cattle; and that respondent was not his tenant,—with other immaterial matter.

JUDGMENT.

I find that 163 head of cattle, the property of tenants of Soonderam and others, were carried off on open day by the retainers of appellant and others, and brought to sale under claim of rent; that the cattle of respondent were among those carried off; and that appellant has not appealed from the moonsiff's judgment in suits Nos. 96, 97, 98, 100 and 101, in which he has been definitively pronounced implicated in carrying off the cattle and liable to the penalties due for such implication: and as I cannot pass a decision inconsistent with those judgments, in which he has acquiesced, by declaring that he had no part in the abstraction of the cattle, he clearly cannot be exempted but must be held liable to the extent sanctioned by the law, under which (Regulation XVII. of 1793, Section 6,) the

moonsiff should apparently have decreed the amount extorted with an equal sum as penalty instead of double the amount.

IT IS THEREFORE ORDERED,

That the decree of the moonsiff be amended, and that the sum of 46 rupees 4 annas, be decreed against appellant and the other persons liable under the decree of the moonsiff who have not appealed, with costs in proportion, and interest from the date of the moonsiff's decree to the date of realization.

THE 17TH MAY 1848.

No. 1 of 1848.

*Appeal from the decision of Mahomed Salim, Officiating Principal
Sudder Ameen, dated 18th January 1848.*

Jugurnath Shah, Appellant,

versus

Pagulram Shah, Respondent.

RESPONDENT sued for 750 rupees, damages, in consequence of having been obliged to leave a feast, at the house of one Madhub Ram, by appellant's ordering his slave to pull him out by the ear.

Appellant resisted the claim, and alleged that he found respondent sitting on the left of his (appellant's) cousin with Roghoo Ram, respondent's brother, on the right, and asked his cousin why he came to the feast; if he did not know the order in which he ought to sit, when respondent used expressions derogatory to appellant, threatened him, and left the assembly; and that respondent is a more tenant of land, serving others, carrying salt, &c., for sale on his own back, and unable to pay the two or three rupees which he owes.

Respondent urged, in reply, that there are two respectable classes of Deenarpoor Shahoos; that he is in the second class, while appellant is in neither of them; that he was sitting in his usual place in the assembly, when his removal was caused by appellant, who, though not qualified by rank to do so, had, without obtaining respondent's consent, effected the marriage of his sister, with a connection of respondent, and, as the other members of the family would not receive food at her hands, appellant had conceived violent animosity against respondent; that he, respondent, has a golah, or wholesale store, in Shumsheregunge, with a capital of 3,000 or 4,000 rupees; and that, being a tenant of land and a shop-keeper, does not derogate from his dignity.

Appellant, in rejoinder, extolled his own caste, and disparaged that of respondent.

Moulvee Mahomed Salim, officiating principal sudder ameen, held respondent's statement established by his witnesses, two of whom were appellant's relations; observing that, though appellant had adduced witnesses in support of his claim, many of them shewed respondent to be of the same caste with appellant and his equal, while the evidence of Jugernath Shah, Siffut Khan, and Gokul Ram, mahajuns, shewed respondent to be a person of great respectability, to whom they would lend 800 or 1,000 rupees without taking a bond; and deeming the ordering a slave to pull respondent out of the assembly by the ear, a gross indignity, and holding a local investigation, which had been solicited by appellant, needless, he decreed against appellant in the sum of 400 rupees, with costs in proportion, and interest to the date of realization.

Appellant now urges that respondent's witnesses are his dependants, who had attended to give evidence without being summoned; that respondent has no golah in Shumsheregunge, and is not a person who could borrow 10 rupees without a bond; that his petition for a local investigation into the circumstances of respondent should have been allowed; and that the witnesses cited by the moonsiff as his relatives, are not nearly related to him, but are relations of respondent, and are at variance with appellant.

JUDGMENT.

I do not think the cause assigned by appellant for respondent's quitting the assembly probable, and I find that his statement of respondent's pecuniary circumstances is contradicted by his own witnesses, one of whom declares respondent to possess 300 or 400 rupees, and another to be a partner in a golah, or wholesale store, in Shumsheregunge: and, further, appellant would seem to have acted with impropriety, by the acquiescence of his cousin in the place assumed in the assembly by respondent, so that, on the whole, I see nothing in the evidence adduced by appellant, or the probabilities of the case, to lead me to doubt the evidence of respondent's witnesses, shewing that respondent is a person of property and respectability, and that he has been wantonly and grossly insulted by appellant, or to hold a local investigation necessary: and looking to all the circumstances of the case, I am of opinion that it will be fairly decided by a decree for 100 rupees, with costs in proportion, and interest.

IT IS THEREFORE ORDERED,

That the decree of the officiating principal sudder ameen be amended, and that the sum of 100 rupees, with costs in proportion, and interest from the date of the decree of the lower court, be decreed against appellant, the remaining costs being charged to respondent

THE 20TH MAY 1848.

No. 165 of 1847.

Appeal from the decision of Moonshee Chytunchurrun Das, Moonsiff of Lushkerpore, dated 12th August 1847.

Kishun Churrun Deb, Appellant,

versus

Lalchand Bunik, Respondent.

RESPONDENT sued for 32 rupees, damages, in consequence of having been abused and threatened with being beaten with a shoe, by appellant and Jyram, because he would not go to an entertainment given by one Luckee Ram, father-in-law of one Kaleechurrun.

Appellant resisted the claim, and pleaded that Kasheenath Bunik asked respondent why he had not gone to the feast at the house of Kaleechurrun, his brother-in-law, and was answered that Kaleechurrun was the slave of a Sahoo, and that other slaves had gone to his house, but that he, respondent, not being a slave, had not done so; that appellant merely remonstrated with him against his abuse of his connections; and that the suit has been preferred because he is a friend of Kaleechurrun, who has sued respondent and others for damages.

Jye Ram and Luckee Ram filed answers in denial of the declaration in the plaint.

The moonsiff (Baboo Chytun Churrun Das) held respondent's statement fully established by the evidence of his witnesses, two of whom, Juggoo Mistree and Sheik Nazim, were also named as witnesses by appellant, and corroborated by the tenor of appellant's answer and the absence of probable ground for a false suit. He observed that appellant, though allowed ample time to take measures for the adduction of his witnesses, who were required from him on the 6th of April, had failed to take the measures necessary to secure their attendance, but that, notwithstanding this neglect, the matter had been investigated by an ameen, whose enquiry had resulted in shewing that appellant had misconducted himself in the manner stated by respondent, and that other persons sued had also acted improperly towards respondent: and the moonsiff was of opinion, under all the circumstances of the case, that it was proper to pass a decree for 20 rupees damages against appellant, with proportionate costs, and interest to the date of realization, and to saddle the other persons, who had defended the case, with their own costs, and thus he decreed.

Appellant now urges that the moonsiff decided the suit of Kaleechurrun for damages in consequence of abuse against respondent, and the present case in his favor, but that as Kaleechurrun's case went against him, this also should have been so decided; that respondent's witnesses are his dependants; that Juggoo Mistree has

proved that respondent first abused appellant and others; that Sheik Nazim has given evidence in the suit of Kaleechurrun, one way, and this suit in another way. and his testimony was therefore unworthy of reliance; that several witnesses had given evidence in the suit of Kaleechurrun, proving appellant's defence; and that, as the tenor of the statement of Kaleechurrun was similar to appellant's statement, the evidence taken in the suit of Kaleechurrun sufficed in this case, but that the moonsiff did not duly reflect on it; and that the ameen's investigation was made at the distance of four ghurries' journey from the place of the altercation, and a petition of objection to his proceedings presented.

JUDGMENT.

I have no doubt of the facts of the case, as shewn by the evidence in this and the cognate suit of Kaleechurrun, cited by the parties. They are, that respondent stated that those who had attended the feast at the house of Luckeeram and Kaleechurrun, of whom one is appellant, were slaves of Sahoos, and that appellant, enraged at this insult, abused respondent in less measured terms; but, advert-ing to the fact that respondent raised the storm of which he complains, and conceiving that much allowance must be made for the conduct of appellant excited to rage by respondent, I am of opinion that the latter has no right to damages.

IT IS THEREFORE ORDERED,

That the appeal be decreed, and the decree of the moonsiff reversed, with costs against respondent.

ZILLAH TIPPERAH.

PRESENT: T. BRUCE, ESQ., JUDGE.

THE 10TH MAY 1848.

Case No. 24 of 1847.

Regular Appeal from a decision of Moulvce Mahomed Ali, Principal Sudder Ameen, dated 14th September 1847.

Ramnarain Shah, (Defendant,) Appellant,

versus

Deepchand Shah and Shumbhonath Shah, (Plaintiffs,) Respondents.

SUIT laid at Company's rupees 56-4.

This suit was instituted on the 17th April 1846, to recover possession of 4 kances of land in an independent talook, belonging to the plaintiffs, from which they alleged they had been ejected by an order of the magistrate, passed on the 20th February 1846 in a summary suit instituted by the defendants under Act IV. of 1840. The claim included mesne profits from date of the magistrate's order.

Of the defendants, Ramnarain Shah and Bashceram Shah, the former only appeared. He pleaded a rent-free title in virtue of two *sumnuds* granted by a zemindar in the years 565 and 574 Pergunnatee, corresponding with the years 1764-65 and 1773-74, prior to the separation of the plaintiffs' talook from the parent estate.

The principal sudder ameen gave judgment for the plaintiffs. He held that it was proved by the documentary evidence filed by the plaintiffs, and by the local investigation of an ameen, that the land, the subject of suit, had always been in the immediate occupation of the talookdars. The defendant's plea he rejected, on the grounds that his *sumnuds* were fabricated, and that he had adduced no sufficient evidence of continued rent-free possession, his only proofs bearing on that point being two ryotee kubooleuts of so recent a date as 1251 B. S., (1844,) and his witnesses saying nothing on the subject.

The collector reported that no traces were to be found in his office of any such lakhiraj tenure as that claimed by the defendant.

There is nothing advanced in appeal at all calculated to affect the decision of the lower court. It is urged that the principal sudder ameen passed no orders on a petition given in by the defendant against the proceedings of the ameen; and this statement is correct: but, as the objections advanced in that petition are contained in the

petition of appeal, the irregularity will not be allowed to operate to the defendant's disadvantage. It is urged, further, that three of the witnesses examined by the ameen deposed in the defendant's favor : that the oral evidence tending to shew that one Ramjeewun was a ryot holding land under the plaintiffs, is disproved by the testimony of Ramjeewun himself, given in the case under Act IV. of 1840 : that a farmer, a lessee of the defendant, had obtained a decree for rent against Ramjeewun, in a moonsiff's court, in December 1843 : that in August of the same year, two parties acting on behalf of the plaintiff's gomashlah had been convicted by the law officer, in the criminal court, of having taken a kubooleut from the defendant Basheeram under duress : and that defendant had obtained a summary award under Regulation VII. of 1799, for arrears of rent against Ramjeewun.

There is no proof of the defendant ever having obtained a summary award for rent against Ramjeewun : but in other respects these statements are correct as to the facts. They do not however affect the case. The moonsiff's decision of 1843 is a very suspicious document, the defendant Ramjeewun having confessed judgment, although stated by the plaintiff to have left the land and absconded : and the remaining reasons are of themselves insufficient, and relate to transactions of too recent a date to be of any force. Again, the defendant refers to copy of a statement of lakhiraj tenures, taken from the collector's office, in which the sunnuds are mentioned : but it is far too suspicious a document to be depended on, as the note recorded on it by the collector shews ; and there can be no doubt that the principal sudder ameen is right in declaring the sunnuds themselves to be fabricated : they bear every appearance of having been engrossed very recently, by the same person ; and they exhibit no record of ever having been presented for registry.

The defendant prays that he may be allowed to file some documentary evidence which the principal sudder ameen would not receive : but there is no proof that it was rejected ; and it was not filed with the other proofs, either in the suit under Act IV. of 1840, or before the collector, or in the lower court : it is too late to receive it now. He concludes by urging that as the land does not exceed 10 beegahs, and as part of it was given for the purposes of a tank, it is not liable to be resumed ; and even if resumable, that he is not liable to be ejected from it. These arguments are, however, irrelevant in the present case ; for not only is the land not appropriated to religious or charitable purposes under a rent-free grant ; but the defendant's title is not recognized ; and the land is proved to have always been in the immediate occupation of the talookdars.

The appeal is dismissed with costs, and the decision of the lower court affirmed.

THE 11TH MAY 1848.

Case No. 30 of 1847.

Regular Appeal from a decision of Moulvee Mahomed Ali, Principal Sudder Ameen, dated 15th September 1847.

Musst. Tarah, pauper, (Plaintiff,) Appellant,

versus

Gour Chunder Buttacharj and others, (Defendants,) Respondents.

SUIT laid at Company's rupees 1,094-14-10.

This suit was instituted by plaintiff on the 18th December 1846, for a 2 annas share of the estate, real and personal, of her deceased husband, Rammohun Doss, with mesne profits.

Plaintiff stated that she had been disseised of the property in question, by certain of the defendants, in the year 1236 B. S. (1829,) while yet in her minority, but after she had been in joint family possession with her co-heirs. She stated that she only attained her majority in 1245 B. S.

Among other pleas, it was alleged by the defendants that suit was barred by lapse of time, plaintiff's age being not less than forty-five, and her husband having died about twenty-six years ago.

Plaintiff was nonsuited by the principal sudder ameen, because she had not stated in her plaint or her reply the date of her husband's death, a material point in the case.

An appeal is preferred by plaintiff from this decision, on the ground that the pleadings are complete without mention of the date of her husband's decease, it being sufficient to shew, which she has done, that she was in possession in 1236, and that she did not attain her majority till 1245 B. S.

I cannot, however, admit the validity of this plea, the exact period of the husband's death being a very material point—not only as being the period from which plaintiff's title dates, but with reference to the defendants' plea that suit is barred by lapse of time.

The appeal is dismissed with costs, and the decision of the lower court affirmed.

THE 12TH MAY 1848.

Case No. 3 of 1848.

Regular Appeal from a decision of Moulvee Mahomed Ali, Principal Sudder Ameen, dated 12th February 1848.

Neetyechand and Kishenchunder, (Plaintiffs,) Appellants,

versus

Ranee Kuteeanee, (Defendant,) Respondent.

SUIT laid at Company's rupees 3,756-5-3.

This suit was instituted on the 17th June 1847, for the recovery of a sum of money paid by the deputy collector of Noacolly to the

defendant, as zemindar of the 7 annas share of pergunnah Amcераbad, on account of collections made from certain lands resumed by the commissioner of the Soonderbuns as being of recent alluvial formation, but subsequently released by the special commission.

Plaintiffs bring their suit on the ground that they alone have a just title to the money, the land having been released as forming a portion of their talook Raydhun, a dependent tenure in the defendant's estate, and the defendant having continued to receive the rent of the talook from plaintiffs, notwithstanding the resumption and attachment of a great portion of it.

The defendant denies that the land is within the limits of the plaintiff's talook, or was released on that ground; and pleads that she is rightly entitled to the rents realized from it while under attachment, she alone having defended the resumption suit, and the decision of the special commissioners having specially declared that the land should be made over to her, and the collections refunded to her.

The principal sudder ameen dismissed the claim, on the ground that plaintiffs had failed in proving it; but chiefly because it was in opposition to the order of the special commissioners, which directed, as stated by the defendant, that she should receive both the land and the amount collections.

As the principal sudder ameen's reasons for declaring the plaintiffs to have failed in proving their claim include all the material points of the case, I will notice them in detail. They are—1st, that plaintiffs had not proved that the land had been made over or leased to Mohunchand, the father of one of the plaintiffs and the brother of the other, pending the result of the appeal to the court of the special commissioners; the only evidence adduced on this point being three receipts for rent granted by the deputy collector to one Yassin and others, but making no mention of the plaintiffs; 2ndly, that plaintiffs had adduced no evidence whatever in support of their statement that the appeal to the court of the special commissioners had been carried on by defendant for the plaintiffs' benefit; 3rdly, that it was incredible that, if the land really belonged to the plaintiffs, they would have allowed the proceedings to go on for years in the resumption courts without coming forward as parties to the suit; 4thly, that the mention of the plaintiffs' talook in the special commissioner's decision was a matter of no weight or importance, other churs and lands being also mentioned in it; 5thly, that the deed of indemnity executed by the defendant in favor of Government, on the money being paid to the former, afforded no proof in support of the plaintiffs' claim.

The principal sudder ameen is wrong in attaching so much importance as he does to the order of the special commissioners in favor of the defendant. I am inclined to think that those officers exceeded their legitimate powers in entering into so much detail

relative to the refund of the collections: it would seem sufficient that they had authorized the refund, without naming the party who was to receive it. But be this as it may, it was never intended that the order should be allowed to operate to the prejudice of any third party, whether a talookdar or other tenant or lessee. And if it had been established in the present case, that the land did actually form a part of the plaintiffs' talook, but that plaintiffs, notwithstanding the resumption and attachment, had continued to pay their rent to the defendant as zemindar, they would clearly have been entitled to a decree.

As ruled by the Sudder Court in the case of *Muhtab Chunder versus Gulthadhur Banerjee and others*, page 439 of the Decisions for 1847, the zemindar in such cases "must necessarily be the person to whom the refund would be made." But it is not meant that the rights of third parties are not to be considered, if brought before the courts.

In the present case, however, the plaintiffs have altogether failed in proving that the land which was resumed forms a part of their talook. Their claim may be said to rest almost entirely on the decision of the special commissioner. But although that decision was, to a certain extent, based on documentary evidence relating to the plaintiff's talook, this is all that can be said of it on that point. The land was released as having formed a part of the defendant's estate at the period of the decennial settlement, and as such was ordered to be restored to the defendant.

Nothing new is advanced in appeal, except that appellants say they are prepared to file the lease granted to Mohunchand pending the result of the appeal to the court of the special commissioners.

This they have been permitted to do; but it in no way affects the decisions of the lower court, no mention of the talook being made in it.

The principal sudder ameen's decision is affirmed, and the appeal dismissed with costs.

ZILLAH TIRHOOT.

PRESENT: JOHN FRENCH, ESQ., ADDITIONAL JUDGE.

THE 3D MAY 1848.

No. 857.

Regular Appeal from a decision passed by Moulvee Neamat Alli Khan, Principal Sudder Ameen of Mozufferpore, dated 9th September 1845.

Musst. Runka Koonwur, Musst. Joymungul Koonwur, and Musst. Roona Koonwur, (Plaintiffs,) Appellants,

versus

Musst. Saje Koonwur and Musst. Rajebunsee Koonwur,
(Defendants,) Respondents.

THIS suit was instituted by the appellants, claiming for themselves and their minor sons the right to succeed to the property in possession of the respondents, who have no male descendant—they being daughters of Musst. Saje Koonwur, and sister-in-law to Musst. Rajebunsee Koonwur.

The respondent Musst. Saje Koonwur, the mother, acknowledges the right of claim to the property; the other, the sister-in-law, Musst. Rajebunsee Koonwur, denies the claim—their father, Bunjun Chowdree, having died prior to her husband, Bundoo Chowdree, do not succeed.

Bharosee Chowdree and Durgah Chowdree in one petition, Jugmoliun in another petition, as third parties, urge they are descendants in the male line from the person who acquired the property, have consequently the prior right to succeed to the property.

The principal sudder ameen dismissed the suit, on the grounds, agreeably to Hindoo law and the customary usage of the country, the daughter's sons do not succeed as heirs to mother's and brother's property; which is ascertained from the printed book of the whole regulations, page the 5th, line 15th; and it was not necessary to enter into the investigation of the claims of the third party.

The appeal against this decision urged: the decision of the principal sudder ameen is contrary to the Shaster or Hindoo law, agreeably to which any Hindoo dying without issue, the brothers of the same blood being separated, the widow retains the right of possession during her life, after her death the daughters and their sons succeed; our right was established; notwithstanding Musst. Saje Koonwur's acknowledgment is filed in this case, these were not taken into consideration by the principal sudder ameen.

The respondent, Musst. Rajebunsee Koonwur, alleged: the soola-namah, or adjusted case, was appealed to the Sudder by Musst. Muntoorna Koonwur, the widow of Sumboodutt Chowdree, by the bewustah filed in that Court, the property devolves to herself through the several descendants.

COURT.

This is a strange suit, although against the party in possession, does not require them to be dispossessed, but professes to await their demise before they, the appellants, obtain possession. It requires the court to ascertain and establish by decree, that they and their sons are the legal heirs to the property. There is no regulation permitting such a suit liable to be tried: many inconveniences would result therefrom if it were. The attorneys may give their opinion on such matters, and not the court to decide on the matter of right and title of persons, who shall hereafter inherit. Under these circumstances, the suit is not admissible until the demise of one or both of the occupants, and there be really a dispute for the property and possession; consequently the decision of the principal sudder ameen is quashed, and the appeal dismissed, with costs chargeable to the appellants.

THE 4TH MAY 1848.

No. 731.

Regular Appeal from a decision passed by Syud Ashruf Hosein, Second Principal Sudder Ameen of Mozufferpore, dated 16th May 1843.

Neemchund Chowdree, *pauper*, (Defendant,) Appellant,

versus

Hunman Chowdree, (Plaintiff,) Respondent.

THIS was for the recovery of Company's rupees 568-14-3, being principal and interest, payable on the first instalment of 500 rupees at the end of Assar 1248 Fusily, agreeably to bond, dated 19th of Assin 1248, for Company's rupees 1,100, dischargeable by two instalments, running at the interest of 8 annas per cent.

The defendant denied the claim *in toto*, and alleged this suit was falsely brought against him to deprive him of Company's rupees 1,700, deposited with the plaintiff, for which a document was given, dated 11th of Sawun 1244 Fusily, on plain paper.

The suit was originally transferred to the sudder ameen at Monghyr, being for a larger sum than he could decide upon, was returned to the judge, who, on the 5th September 1842, transferred the case to the second principal sudder ameen for trial.

The second principal sudder ameen passed a decision in favor of the plaintiff, on the grounds the subscribing witnesses to the bond

proved the writing of the bond and taking the money, and the objections of the defendants are not liable to be taken into consideration.

The defendant appealed, urging the bond is a forgery in which the second principal sudder ameen made no enquiry; that he could read and write, it was necessary to compare his handwriting with that on the bond.

Respondent answered: the second principal sudder ameen made strict enquiry into the case, and passed a decision agreeably thereto; the appellant to avoid payment of the amount of decree, deceitfully appealed *in forma pauperis*.

COURT.

On perusal of the papers of the case, it appearing the witnesses had not been sufficiently interrogated to elicit the truth, the witnesses were required to attend this court. Four were adduced; two, the signing the bond and taking the money; two, that the debt had been demanded. The other subscribing witnesses were reported to have died. First witness, Bhyro Koonwur, who was a subscribing witness to the bond, deposed in this court, the 1,100 rupees were taken out of a large box or chest, which was painted white, and the two bags in which the money was brought forth were of cloth. The second witness, the transcriber of the bond, Purmasher Duth, did not see from whence the money was produced, but it was brought forth in two twine (that is, taut) bags. The third witness, Kuller Matoon, having been in the employ of the respondent for a period of ten years, after a short absence therefrom he again entered the respondent's service and was still in his employ. He was interrogated whether the respondent's treasure chest was kept in the shop or the house: answered it was in the house, but is perceptible from the shop, and is painted black. From these avowed discrepancies, ordered, a decree be passed in favor of appellant, with costs of suit chargeable to the respondent, and the decision of the second principal sudder ameen reversed.

THE 5TH MAY 1848.

No. 858.

Regular Appeal from a decision passed by Moulvee Neamut Ali Khan, Principal Sudder Ameen of Mozufferpore, dated the 5th of November 1845.

Gobind Purshad and Gunga Purshad, (Defendants,) Appellants,
versus

Sheehoodyal Rae and ten others, (Plaintiffs,) Respondents.

THE amount of action is laid at Company's rupees 1,409-6-6 being three times the amount of the annual rent roll of the village

sued for, including mesne profits. The suit is for the reversal of the proceeding, dated the 14th of December 1843, passed by the superintendent of khaus mehauls, and for the possession and settlement to be made with the plaintiffs of the whole village Damodurpore, chukla Geeasoddeen, pergunnah Saraisu.

The village being free of revenue, the deputy collector attached it with a view of assessing the same; after investigation a decree was passed in favour of Government; and a subsequent proceeding declared the settlement was to be made with the respondents, and was carried into effect. The appellants appealed against the proceeding passed by the deputy collector respecting the settlement, to the superintendent of khaus mehauls. That officer reversed the proceeding of the deputy collector, and effected the settlement of the village with the appellants. For the reversal of this last proceeding is the ground of this suit.

The principal sudder ameen decreed in favour of the respondents, on the grounds: The decision of the moulvie of the court, dated 27th of June 1815, in which Lochund Khoree was plaintiff *versus* Gowree Rae, defendant, in which case the defendants (appellants) in the present case were a third party, and were directed, if they had any claim to the proprietary right of the land, to sue in the court, which decision was affirmed, in appeal, by the register on the 6th of May 1817, from which period they have not sued. From the documents filed by the plaintiffs (respondents) the property is proved to belong to them; and the defendants (appellants) excepting the proceeding of the superintendent of khaus mehaul has no other document for the reversal of the claim set up in the plaint.

In appeal against this decision, it was urged: The decision cited by the principal sudder ameen, does not prove the property belongs to the respondents. The counterpart of agreements with the ryuts, filed by the respondents, have not been verified in any court. The records in the Government office (collectorate) prove the property belongs to them, the appellants, is sufficient; and after a full investigation of those circumstances the settlement was effected with them by the superintendent of khaus mehauls.

The respondents alleged: arising from the statement the property was purchased, the deputy collector called for the bill of sale, which was not filed by the appellants; and the evidence of their witnesses was contradictory.

COURT.

From perusal of the papers of the suit, it is clearly an assessment case, for the reversal of which the ordinary courts have no jurisdiction. When the proceeding of the deputy collector was reversed by the proceeding of the superintendent of khaus mehauls, or even after the revenue commissioner affirmed the settlement made by the superintendent of khaus mehauls and rejected the appeal of the

respondents, the respondents should have appealed the case to the special commissioner's court: not having done so, the ordinary courts have not the power to investigate such disputes under the 5th Clause, 4th Section, IIIId. Regulation of 1828, consequently the decision of the principal sudder ameen cannot be upheld. Therefore, ordered, the decision of the principal sudder ameen be reversed, and decree in favour of appellant; costs of suit chargeable to the respondents.

THE 11TH MAY 1848.

No. 790.

*Regular Appeal from a decision passed by Moulvee Neamat Ali Khan,
Principal Sudder Ameen, Mozufferpore, dated 12th
September 1845.*

Durghbeighee and five others, (Defendants,) Appellants,

versus

Mr. William Shearman, of the factory at Keeontah, (Plaintiff,
Respondent.

THIS was instituted to recover the sum of Company's rupees 2,290-6-4½, being the principal and interest, for damages done by the erasure of indigo plant from 44 beegahs, 14 biswas, and 10 dhoors of land of the villages Gobindpore and Mohonepore, pergunnah Nagpoor, in the year 1251 Fuslee.

The plaint sets forth the whole of the above villages were farmed to the factory from 1245 to 1251 Fuslee, in the name of Sheehoo Purshad Singh, a servant in the employ of the factory. The first cutting of the indigo weed was effected and manufactured, and 44 beegahs and 14 biswas were left for the second cutting, called dongee indigo, viz. 26 beegahs, 16 biswas, and 5 dhoors, factory cultivation, 17 beegahs, 18 biswas and 6 dhoors, ryot cultivation. The present lease holders caused to be rooted out by the koodall, or spade. They were complained against in the foudary, and were fined; the plaintiff directed to sue for the produce in the civil court.

The defendant Durghbeighee Chowdree and five others pleaded: The plaintiff had not specified the quantity of produce damaged in the separate villages. The foudary enquiry did not elicit any proof favourable to the plaintiff, whose lease on 4 annas expired with the year 1250 Fuslee, and the other 12 annas extended to the end of year 1251 Fuslee. The plaintiff himself caused the produce to be cut and carried away to the factory. They had no hand in damaging the produce. The plaintiff's wishing to obtain an under-lease of the land from them, which being refused is the cause of this suit.

The defendant, Joomuch Essur, pleaded: having been released by the foudary, the plaintiff has sued him unjustly.

The principal sudder ameen decreed in favor of the plaintiff, on the grounds it appearing from the proceedings of the criminal court the defendants had forcibly damaged the produce, and the evidence of witnesses proved by the measurement of land the quantity of produce damaged.

The defendants appealed, urged : The witnesses were dependants of the respondents, and there is a difference in their evidence. The measurement filed was caused by the respondent, therefore not to be depended upon. The respondent has not in his plaint specified the date and month the damage was effected, therefore should have been nonsuited. Our witnesses were the cultivators and surrounding neighbours.

Respondent answered: all the witnesses were not his servants, but landholders and surrounding neighbours; a detailed quantity of land on which produce had been damaged is specified in the plaint.

COURT.

The lease on which the suit depends not being filed, and in absence of the verity of the mooktarnamah, which delegates to the respondent, the superintendent of the factory, to institute and defend suits for and against the factory, shew the investigation is incomplete; therefore, it is ordered, the decision of principal sudder ameen be reversed, and the case returned for re-investigation. The first point of enquiry is, whether the respondents was duly delegated by mooktarnamah, or power of attorney, to sue on part of the proprietors of the indigo factory. The mooktarnamah in Persian filed in this suit purports to have been written, signed, and of course witnessed on the 5th of January 1844. The stamp of eight rupees on which it is written appears from the notification on the back thereof to have been sold on the 23d of July 1845, at the stamp office in Calcutta, by C. Waller; hence, being dated one year, six months, and eighteen days prior to the vend of the stamp on which it is written, the document cannot be considered valid. The respondent must be called on to file the original English letter, with a translation thereof in Urdu or Persian, which delegated to him the superintendence of, to institute and defend suits for and against, the factory; if it be not on a proper stamp, to return the same for the purpose of having the proper stamp impressed thereon. If the respondent has no document duly authorizing him to institute and defend suits on behalf of the proprietors of the factory, then to call on both parties to file precedents for and against the trial of such suits; if admissible, to call on the respondent to file the lease, for the purpose to ascertain whether the damage occurred prior to, or subsequent to the expiration thereof. To call for any further documents, or witnesses, may be deemed necessary, and to pass a decision according to the merits of the case. The amount of stamp of the appeal plaint to be returned.

THE 13TH MAY 1848.

No. 7.

*Regular appeal from a decision passed by Syud Ashruf Hosein,
Second Principal Sudder Ameen, Mozufferpore, dated 16th
December 1845.*

Bhanee Rae, Surrubjeet Rae, and fifteen others,
(Defendants,) Appellants,

versus

Guzraj Koonwur, (Plaintiff,) Respondent.

THE original suit was for the recovery of amount of interest accruing on account of decree, omitted to be inserted in the decree. In that case the second principal sudder ameen passed a decision on the 5th of December 1843, in favor of plaintiff, and each party to pay at the charge of their own costs. It was appealed against by the defendants. The case was returned on the 23d of May 1845 for re-investigation, to take into consideration, under the circumstances that appeared in the case and from the Constructions and Circular Letters pointed out, whether the suit for interest was triable? if so, to take into consideration, under the circumstances of the case, the defendants were chargeable with their own costs. The second principal sudder ameen passed a similar decision to that of his former, and that the defendants were chargeable with their own costs, arising from their opposition to paying the interest on the amount of decree. Against this decision the defendants again appealed on the same objections as preferred in their former appeal, viz. that a suit for interest omitted in a decree is not triable under Constructions Nos. 690 and 1129, and under Circular Letter 11th January 1839: an application for review of judgment should have been submitted: that Chuttroo Rae has been unjustly made a defendant and decreed against in the interest case, when he was not a defendant on the original case:— and this addition in this appeal, that the instructions passed by the additional judge on returning the case for re-investigation have not been conformed to.

The respondent pleads: Several of the defendants have paid their portion of the decree, and others, under consideration of the correctness of the decree, have refrained to appeal. These appellants have done so unjustly. Chuttroo Rae was born at his grandmother's, residing at a great distance, whereby he being unacquainted with the circumstance, therefore was omitted in the general suit: being a sharer in the property he is included as defendant.

COURT.

The decree passed under date 15th February 1833, in which the accruing interest chargeable to the defendants in that case was omitted, shews the plaintiff in that case is respondent in this, and the appellants in this were a portion of the defendants in that. This suit was for the recovery of surplus revenue paid into the collectorate over and above his own share (demandable from the defendants, sixty-two in number,) on account of villages Hurpoor-reeah, pergunnah Monpore, in which village both the plaintiff and defendants were sharers. The plaintiff, respondent in this case, on the 8th of August 1833 presented a petition in execution of his decree, that a certain sum, surplus proceeds of auction sale of an estate belonging to the defendants, should be called for to the extent of his decree and made over to him. On the 20th of September 1836 the respondent was directed to produce in seven days proof that the surplus money in the collectorate belonged to the defendants; not having brought forward proofs, on the 30th of September 1836 the case was struck off the file; and near four years after application was made on the 22d July 1840 for the case to be brought on the file, and submitted a list of property in order for sale in execution of his decree. After the necessary inquiries of the matter, the sudder ameen on the 16th December 1841 passed an order that the lotbun-dee of the property be submitted to the revenue commissioner, recommending the sale thereof in execution of the decree, and that the plaintiff (respondent) present a petition on a stamp of full value for the interest, when the requisite order regarding it will be passed. On the 28th of November 1842 the present appellants deposited the amount of decree. On the 9th of December 1842, the respondent applied for the amount of decree deposited, and at the same time stated his intention of suing for the interest. The respondent not having presented a petition on a stamp of full value, as directed by the sudder ameen for the interest, shewed contumacy on the part of the respondent; and it must be borne in mind that the decree of the sudder ameen dated 15th February 1833 exhibits that the defendants in that case were sharers in the very village for which they were sued to refund the surplus revenue paid into the collectorate by the plaintiff (respondent;) hence he could not be ignorant they had property which might be recommended by him for sale in execution of his decree, and might instantly have been submitted, in lieu of doing so after a period of seven years and six months, thereby showing neglect on the part of the respondent in effecting the execution of his decree. Under these circumstances, and in conformity to Construction 690, the respondent has forfeited the claim to interest accruing on the amount of decree passed on the 15th of February 1833. Therefore, ordered, a decree in favor of the appellants, with all costs of both courts chargeable to the respondent: the decision of the second principal sudder ameen reversed.

THE 15TH MAY 1848.

No. 9.

Regular Appeal from a decision passed by Moulvee Niamut Ali Khan, Principal Sudder Ameen, Mozufferpore, dated 29th November 1845.

Musst. Inderputtee Taqoorain, (Defendant,) Appellant,

versus

Jugput Taqoor and three others, (Plaintiffs) Respondents.

THIS is an appeal against the decision of the principal sudder ameen, which was passed without passing the necessary orders for proof from the defendants to be adduced, and contrary to 3d Clause, 12th Section, XXVIth Regulation of 1814. The suit was for possession of $\frac{3}{4}$ d portion within the shares, situate in sundry villages and pergunnahs, appertaining to Hurnath Taqoor, their demised brother without heir. The defendants not appearing on issue of the notice of the case and proclamation, the order for *ex parte* investigation was passed; and after the plaintiffs had filed their documental proof, the defendants filed their answers separately. Bishenduth Taqoor claiming the whole of the property of the demised as his property under adoption of his son. Musst. Inderputtee Taqoorain as being her right, as the widow of the deceased, who separated from his brothers, and that she was in possession. Gopall Taqoor and two others alleged the claim of the plaintiffs was correct.

The principal sudder ameen passed a decision in favour of the plaintiffs on the ground their claim was proved by documents and evidence of witnesses; that after the *ex parte* examination had commenced, the defendants filed their answers separately, and to this day had not adduced their proofs, &c.

COURT.

It clearly appears from the decision of the principal sudder ameen, the very day he called on the defendants' (appellants') attornies for the proofs of their respective allegations, without giving them time to file documents or adduce witnesses in support of their allegations, passed the decision on the plea he was limited to the period of nine months to dispose of cases on his file. This suit, although presented to the court on the 12th of February 1845, cannot be considered to have been regularly brought on the file until the receipt of the letter from the Sudder Dewanny Adawlut, giving sanction to investigate the suit regarding property in the two districts of Tirhoot and Sarun, at Tirhoot, which appears to have been received by the principal sudder ameen on the 12th of June 1845, hence the decision was passed within six months from the date it was brought on the file. Although an *ex parte* enquiry has commenced, the defendants may file their answers previously to passing the decision on the case. Having admitted the answers of the defendants, it becomes necessary

they should be permitted to support their allegations by documental or other proofs they could adduce. No time having been allowed to do so, the investigation of the case is incomplete : therefore, ordered the decision of the principal sudder ameen be reversed and the case sent back for re-investigation, to try the case *de novo* after taking the proof from the defendants on their respective allegations. The amount of stamp of the appeal plaint be returned to appellants.

THE 15TH MAY 1848.

No. 10.

Regular Appeal from a decision passed by Moulvee Neamat Ali Khan, Principal Sudder Ameen, Mozufferpore, dated 29th November 1845.

Bishenduth Taqoor, (Defendant,) Appellant,

versus

Jugput Taqoor and three others, (Plaintiffs,) Respondents.

THIS was an appeal against the same decision passed by the principal sudder ameen in case No. 9, and on the same objections as in that case. Similar decision is accordingly passed in this as in that case.

THE 23D MAY 1848.

No. 13.

Regular Appeal from a decision passed by Moulvee Niamut Ali Khan, Principal Sudder Ameen, Mozufferpore, dated 18th December 1845.

Musstn. Beebee Eradut and Bebee Azmut, (Plaintiffs,) Appellants,

versus

Keeallee Singh and six others, (Defendants,) Respondents.

THIS suit was for the recovery of Company's Rupees 2,114, 14 annas, 11 pie, 16 krants, being the principal and interest of proceeds of 4 annas share of the whole 16 annas of village chuck Beikun, *alias* Sahee Khan Nowahadah, pergunnah Surreisa, from 1241 to 1251 Fuslee.

The plaint sets forth the whole village appertained to the ancestors of the plaintiffs; that 6 annas share were sold to Cheit Singh and others, 6 annas share to the defendants, Keeallee Singh and others, and 4 annas share remained to the plaintiffs. The husband of Beebee Eradut having died, and Nutto Khan, the husband of Beebee Azmut, having been for a long time ill, and plaintiffs themselves living at a great distance from the village were unable to collect the rents, and that the defendants, Keeallee Singh and others, 6 annas sharers of the village, tendered their services to take the management of their (plaintiffs') 4 annas share, and pay them the proceeds thereof; failing to do so, is the cause of the suit.

The answer of the defendants allege: There are two of the defendants minors, the plaint does not mention the names of their guardians, nor are they included in the suit. Each of the plaintiffs granted lease of their shares separately from 1242 to 1246 Fuslee, on advance of 300 rupees, at the rent of 82 rupees annually, in the name of Keeallee Singh only. Agreeably to the stipulation, the rent was regularly paid. In 1247 Fuslee the village having been attached, and the servants of Government having effected a settlement thereof with the proprietors, the plaintiffs again jointly leased the 4 annas share to Keeallee Singh for nine years, from 1249 to 1257 Fuslee, on an advance of 1,925 rupees, including the former advance, bond debt, and cash paid down on the payment of the Government revenue, agreeably to which are in possession.

The principal sudder ameen dismissed the suit, on the grounds: The plaintiffs had not proved their claim. The documents filed and evidence of witnesses adduced by the defendants proved the share had been leased to the defendants. With regard to the arbitration of the matter of dispute, neither party having regularly appointed the arbitrators, it cannot be taken up by the court.

The plaintiffs appealed against this decision, urging the respondents' lease to be a fabrication, and the witnesses are dependants of the respondents.

Respondents answered, the principal sudder ameen made a strict enquiry into the matter of the suit, and decided accordingly in their favour.

COURT.

The original plaint does not clearly point out in what manner the 4 annas share was placed in the possession of the respondents, and the witnesses adduced by the appellants have failed to prove the respondents verbally undertook to pay the proceeds of the 4 annas share, that is, neither one of the four witnesses deposed they were present at the time the respondents verbally declared to the appellants, they would take the management of the 4 annas share, and would pay the proceeds thereof to the appellants. A verbal declaration is very unusual in a matter which requires written deeds between the parties. Although the appellants have broken down in establishing the vague claim set up by them, yet the respondents do not appear to have satisfactorily proved their allegation, the 4 annas share was leased to them. In the foudjardce proceeding dated 29th June 1835, corresponding with 1242 Fuslee, mention of the 4 annas lease is derived from Kceallee Singh's answer, hence, not admissible proof in his own behalf. The copy of answer filed from a case in which Nuttoo Khan was plaintiff *versus* Beebee Jeenut, Beebee Eradut, and sundry others including Keeallee Singh, being a joint answer of all the defendants therein, cannot be considered as the declaration of Beebee Eradut

and Beebee Azmut only, consequently cannot be adduced as proof against them, and may have been inserted without their knowledge by Keeallee Singh. It is true in the moonsiff's decision dated 21st of July 1838, corresponding with 14th of Sawun 1245 Fuslee, there is mention of the 4 annas share was leased to Keeallee Singh, yet, it is a lease, as one, not two leases, as set forth in the answer of Keeallee Singh and others in this case: hence the proof of this document (the decision of the moonsiff) in favour of the respondents is doubtful. The principal sudder ameen has not sufficiently investigated this case, viz. he should have called for the cancelled kuboolents, or counterparts of the leases, and to have verified them by evidence of witnesses, and the jumma-wasil-bakce, or papers of the payment of the annual rent, during the former leases, filed in the case, have not proved authentic by the evidence of witnesses, which is requisite; and to have called for the original roll of papers of the settlement officer, and to have compared the two copies of evidence, that of Allumullah and Pursmundoss, with the originals in the above mentioned roll. If Keeallee Singh and others do not satisfactorily prove that 4 annas share was leased to them, then to take in consideration whether they are not liable to pay the rent realized from the 4 annas share, of which they have evidently held possession. Owing to the insufficient investigation, the decision of the principal sudder ameen is reversed, and the case returned for re-investigation as indicated above. The amount of stamp of appeal plaint to be returned.

THE 26TH MAY 1848.

No. 12.

Regular Appeal from a decision passed by Moulvee Neamut Ali Khan, Principal Sudder Ameen, Mozufferpore, dated 6th December 1845.

Brijbeharee Lall, (Plaintiff,) Appellant,

versus

Mr. William Shearman, (Defendant,) Respondent.

THIS suit was for the recovery of Company's rupees 1,147-4-9, the value of indigo plant on 114 beegahs, 14 biswas, and 14 dhoors, cultivation in the village Chaundchore, pergunnah Surreisa, in the year 1251 Fuslee.

The plaint purports that the plaintiff himself and the ryots of the village have for several years cultivated the indigo plant for the defendant, at the rate of 10 rupees per beegah, at which rate the above mentioned quantity of land was cultivated in the year 1251 Fuslee, and the plant cut and carried to the factory by the defendant; not having paid for the same, this suit is instituted.

ZILLAH TIRHOOT.

The defendant answered : It is customary at his factory to pay 5 and 6 rupees per beegah to those who of their own accord cultivate indigo, at which rate the plaintiff was paid, on the cultivation of 121 beegahs, 9 biswas, in the year 1250 Fuslee. In 1251 Fuslee he cultivated 24 beegahs only : at the above rates he was entitled to Company's rupees 144-8-6, which was tendered to him but declined.

The principal sudder ameen, in his decision, states : Although from the report of the ameen deputed by the court tends to establish the plaintiff's claim, yet from the sundry alterations and interlineation in the kusrah, or paper of measurement account, the ameen being unable to give a clear answer to the interrogations put to him regarding the interlineation, the court cannot place any confidence on those papers : the plaintiff having filed no other proof, and the defendant having acknowledged the sum of Company's rupees 144-8-6 to be due, therefore that sum was decreed to the plaintiff.

The plaintiff appealed, urging his claim was proved by the ameen's report, if not correct he had petitioned that the books of the factory should be called for, and that the factory writer and Moonshee should be summoned to prove the correctness of the plaint, which request was not complied with.

The respondent answered that the ameen's report was incorrect, and the decision passed was correct.

COURT.

There is no alteration or interlineation in any of the several parcels of land inserted in the account of measurement appears to have been made; under the head kyfeut there are some, but not to the extent of every item set forth in the report of the omlah of the principal sudder ameen. The answers of the ameen to the interrogations put to him are clear and unequivocal. No proof having been adduced that the plaintiff colluded with the ameen to falsify the accounts, the fault of interlineation effected by the ameen should not fall on the plaintiff, the ameen having been deputed by the court. The court being dissatisfied with the accounts filed should have quashed them and deputed another ameen; but the deputation of an ameen to ascertain by ocular demonstration whether indigo was cultivated on certain particular spots after an elapse of a year, must be uncertain, for the kyfeut, or remarks, which have been interlined or altered rests merely on the visibleness or otherwise of the indigo stubble on the ground; this and the defendant not attesting the measurement paper with his signature are not sufficient grounds for setting aside the measurement papers; but the principal sudder ameen should have perused the evidence taken by the ameen whether the witnesses proved the cultivation of the several parcels with indigo; which not having done, the investigation is incomplete; therefore, ordered, the decision of the principal sudder ameen be reversed, and the case be sent back for re-investigation. To peruse the evidence of witnesses

taken by the ameen and to compare them severally with the parcels of land inserted in the measurement paper, and to take into consideration what parcels have and have not been proved, and to call on the defendant to file a copy of account of payments made to the plaintiff on account of 1250 Fuslee on the quantity of land cultivated that year, together with the original books, in order to ascertain therefrom what rate per beegah was paid that year, by way of guide to fix the rate on such quantity of land as may be proved to have been cultivated in 1251 F. S. Having fully re-investigated the matter, to pass a decision agreeably to the merits of the case. Amount of stamp of appeal plaint to be returned.

THE 29TH MAY 1848.

No. 82.

Regular Appeal from a decision passed by Moulvee Niamut Ali Khan, Principal Sudder Ameen, Mozufferpore, dated 23d December 1845.

Syed Abdollah, (Plaintiff,) Appellant,

versus

Bheicho Rae and eleven others, (Defendants,) Respondents.

THIS suit was for the resumption of 19 beegahs, $5\frac{1}{2}$ biswas of land, situate in village Tujunnee, chukla Ghujore, pergunnah Beesareh, together with mesne profits from 1238 to 1250 Fuslee, the amount of action being Company's rupees 1,839-8-6.

The plaintiff purports. The plaintiff purchased the abovementioned village under two bills of sale; after obtaining a mutation of his name in the records of the collectorate, he sued several of the ryots who cultivated lands without pottahs, or agreements, and obtained decrees against them; not being able to realize the amounts from their roguery, a suit was instituted under 4th and 5th Clauses, 1st Section, VIIIth Regulation of 1819, against 133 ryots, which case was nonsuited with directions to sue the ryots on their distinct cultivations. The defendants being joint cultivators of the above kasht, or cultivation, they are sued jointly under the above direction.

Defendant, Bheicho Rae, answered: The milkecut of the village belonged to himself and others, but the minhye appertained to Mirza Shumsodeen Ali Khan. The minhyedars granted a pottah to his father, Surrubjeet Rae, for 14 beegahs and 5 biswas, on the annual rent of rupees 11-5-6, from 1220 to 1224 Fuslee, agreeably to which the rents have been regularly paid to the former minhyedars, and after the plaintiff's purchase to his omleh regularly, who wishing to grant receipts as ryots in lieu of malik, hence the receipts have been kept back and unjustly sued for rent, the payment of which has never been withheld.

The defendants, Amool Rae and others, answered they had no concern in the cultivation.

The principal sudder ameen passed a decision on the following grounds:—Bheicho Rae, defendant, having paid his rent in part, therefore it was his opinion the kasht, or cultivation, was not liable to be resumed; but he was liable to the mesne profits, after deduction of two items—the amount received on the attachment of the property of Bheicho Rae, and the amount of receipt signed by the gomashteh of the plaintiff; the amount balance, Company's rupees 474-12-5-16, decreed payable by Bheicho Rae: nothing having been proved against the other eleven defendants, they are relieved from liability.

Against this decision the plaintiff appealed for not awarding the resumption of the kasht, or cultivation, held by the respondents, to which he has a claim legally under the 4th and 5th Clauses, 10th Section, VIIIth Regulation of 1819, and against the release of eleven persons, respondents, from liability to the mesne profits decreed, and for the inefficient adjustment of the said mesne profits.

Bheicho Rae, respondent, answered, he had also appealed against the decision, which is a sufficient answer to this appeal. The other eleven respondents alleged they had no concern in the kasht, or cultivation, of Bheicho Rae.

COURT.

To ascertain whether the appellant proceeded legally previously to suing for resumption of the kasht, or cultivation, the several former decrees for the payment of the rent for the kasht in question should have been filed; which decrees would also shew whether the eleven persons relieved are or are not liable for the mesne profits. It appears from the decision of the principal sudder ameen, called for two or three cases from the record office, from documents and papers thereof gleaned the information by which he was guided in passing the decision in this case. Copies of these proofs should have been caused to be filed. Owing to the absence of these proofs and the decrees for payment of rent above alluded to, ordered, the decision of the principal sudder ameen be reversed, and the case be returned for re-investigation. To call on the plaintiff to file the decrees asserted in the plaint, for rent obtained against Bheicho Rae and others on account of the kasht in question, to ascertain from them whether the proclamation for the payment of enhanced rent was, in conformity to the 10th and 11th Sections, Vth Regulation of 1812, affixed against the dwelling of all the defendants named in the plaint, and whether the decrees made them all liable for the rent. To call on Bheicho Rae to file the decision in which he proved his right of malik and not liable to higher rates of rent than those mentioned in the pottah filed. To call on one or other of the party in this suit to file copies of those documents and papers, from the cases called for from the record office, from which the principal sudder ameen glean-

ed the information that led to the reasons assigned in his decision. Having fully re-investigated the matter, to pass a decision agreeably to the merits of the case. The amount of stamps of both the appeals to be returned to the appellants.

THE 29TH MAY 1848.

No. 284.

Regular Appeal from a decision passed by Moulvee Niumut Ali Khan, Principal Sudder Ameen, Mozufferpore, dated 23d December 1845.

Bheicho Rae, (Defendant,) Appellant,

versus

Syed Abdoollah, (Plaintiff,) Respondent.

THIS was an appeal against the decision passed by the principal sudder ameen, urging the amount of rent payments proved by evidence of witnesses had not been deducted from the plaintiff's claim. His kasht and rent are only those mentioned in the pottah filed, yet the decree is passed for a larger quantity of land and increase of rates beyond those mentioned in the pottah, &c.

COURT.

In the case No. 82 just decided, this appellant as defendant and respondent, having been returned for re-investigation, the objections urged will, of course, at the same time be taken into consideration, as will appear from the instructions passed by this court in that case; and the refund of the amount of stamp of appeal plaint is also ordered therein.

THE 31ST MAY 1848.

No. 83.

Regular Appeal from a decision passed by Moulvee Niumut Ali Khan, Principal Sudder Ameen, Mozufferpore, dated 29th December 1845.

Mohunt Rugnath Doss, (Plaintiff,) Appellant,

versus

Baboo Ramnarain Singh, Proprietor, (principal Defendant,) Soobunse Rac and Shaik Jumun, Cultivators, and Ramdyall Doss, Poojarce or Priest, (Defendants,) Respondents.

THIS suit was for the investigation of the right and for the possession of the situation of priest, brick-built temple, and mud-built huts, and three beegahs of land, on which the said buildings are erected, in the village Shazadpore, together with other parcels of land, situate in different villages in pergunnah Sureisa, appertaining to the aforesaid temple, and mesne profits of the said parcels of land from 1250 to 1251 Fuslee. Action laid at Company's rupees 4,593-9-3, being

partly at eighteen times the amount of the annual rent and price of the rest.

Purport of the plaint is : Muhunt Hurkishen Doss, the ancestor of the plaintiff, was the principal of the temple at Ramnughur Nurbaghee, who had three *chelas* or pupils ; 1st, Muhunt Hurjun Doss, the principal at Ramnughur, &c. ; 2d, Muhunt Deibnarain Doss, the principal at Shazadpore ; 3d, Muhunt Guneish Doss, the principal at Madeib Puttee. After the demise of Hurjun Doss, Muhunt Alickram Doss became principal in his stead ; on his death, Muhunt Jykurrun Doss ; after him the plaintiff became the chief principal. Formerly it was customary when the pupil became a principal at a distinct place, built temples, and acquired lands, they appertained to the chief temple. In the place of the second pupil, Deibnarain Doss, Jankeeram Doss became the principal ; owing to his old age, assigned the whole of his property under a written deed, *tumleeknamah*, to the plaintiff, dated 8th Cheit 1248 *Fuslee*, agreeing with the 15th of March 1841, caused it to be registered, delivered to the plaintiff, and gave possession. Having caused the mutation in the Government office, sued for the attachment of the property of Soobunse Rae, on account of rent on the cultivation of Puttee Khajoorree, for 1250 F. S., in which case Baboo Ramnarain filed a third-party petition. The assistant collector decreed in favour of plaintiff. On appeal to the collector that decision was reversed, then a suit was instituted in the moonsiff's court for the reversal of the collector's decision, and for the realization of the rent from Soobunse, the cultivator, and Shaik Jummun, the farmer ; a decree was passed in favour of the plaintiff, but on appeal the judge reversed the decision on the 21st of July 1844, and directed the plaintiff to establish the right to the property. The plaintiff having been thus prevented from realizing the rent by the opposition of Baboo Ramnarain Singh, has thereby been dispossessed, sues accordingly.

Defendant, Baboo Ramnarain Singh, answered : The temple in the village Shazadpore and the land attached thereto never appertained to the temple of Ramnughur Nurbaghee. The temple under dispute was built by Baboo Surubjeet Singh, the ancestor of the defendant, for his own religious rites or devotion, and sanctioned the appointment of Gosain Deibnarain priest thereof, on whose death Jankee Doss was *poojaree* or priest, and on his demise, Ramdyal Doss was appointed by the defendant. The *tumleeknameh* is false and fabricated. If the temple appertained to that at Ramnughur Nurbaghee, where was the necessity of writing the *tumleeknameh*, or written assignment of the property ? The mutation of the plaintiff's name in the Government office is incorrect, for at the time of application for the same, petition objecting thereto was filed, and the mutation refrained from.

The other defendants appointed an attorney, but filed no answer.

The principal sudder ameen dismissed the case, on the grounds: The documents filed by the plaintiff are all suspicious and not liable to be countenanced. When the deeds of the land are not valid, the investigation regarding the temple is unnecessary. From the documents filed by the defendant, together with copy of the collector's decision, dated 11th of November 1841, and evidence of his witnesses, have established the defendant's allegation.

The plaintiff appealed, urging: The decision was contrary to the circumstances of the case. The principal sudder ameen did not enquire whether the temple was built by Debnarain Doss or by the ancestor of the defendant, or whether Debnarain Doss and Jankee Doss were appointed poojarce, or priest, by the defendant, or were themselves the proprietors. A proceeding of the collectorate filed shews that his (the appellant's) first application for mutation was rejected, from the search having been made among the revenue records for the name of Jankee Doss, where it was not to be discovered, but on the subsequent application, the minhye records were searched and the name of Jankee Doss was reported to be inserted therein, when a mutation of his name was effected.

The respondent answered: The appellant is the chief principal of Ramnughur Nurbaghee temple, that at Shazadpore does not appertain to him, which temple was erected by the ancestor of Ramnarain Singh. The evidence of the witnesses of the neighbourhood clearly proved the appellant fabricated the tumleeknameh, or written assignment of the property, after the demise of Jankee Doss; and the appellant's own witnesses deposed that the tumleeknameh was written when Jankee Doss was nearly dying, at such time persons have not their clear faculty, and the deed cannot be valid. The documents filed by the appellant are wholly false.

COURT.

The objections urged by the appellant are frivolous, inasmuch as the points regarding the building of the temple and the persons who performed the rites to the idols were deposed to by witnesses adduced by both parties. With respect to having ultimately succeeded in obtaining the mutation of his name in lieu of Jankee Doss in the minhye records of the collectorate, give no claim to the property; for the regulation expressly declares the registry of grants exempt from the payment of revenue does not give the party registering any lawful claim to the property. The appellant in the original plaint states it was formerly customary usage for all temples built and land acquired by the *chelas*, or pupils, to devolve to the chief principal priest, if so under what cause was the tumleeknameh given, is not shewn. Under the circumstances alleged, the writing of that document alone throws a very strong suspicion of its validity, exclusive of the evidence of witnesses regarding it. The appellant's attorney, to shew it was not customary with the respondent's ancestors

to seal their deeds but merely to write their names thereon, filed copies of three documents on which there was no seal impression, one signed Oomrow Sing, dated 1197 Fuslee, two signed Surrubjeet Singh, dated 1201 and 1206 Fuslee.

The original documents were called for from the collectorate: the signatures on these original documents were compared with the signatures on the documents filed in the original suit, and did not correspond. This day, the attorney of the respondent filed copy of a petition, that is, an application for the settlement of some estates, dated 21st of Aughun 1197 Fuslee with a seal impression, with the name of Oomrow Sing 1196 thereon. The original of this cannot be called for, it being filed in a case in the special commissioner's court at Calcutta, from whence the copy now filed was obtained, under the signature of E. Currie, special commissioner, Calcutta, hence there is no doubt of its authenticity. From this document having a seal impression thereon, it will appear all the documents for parcels of land exempt from payment of revenue, filed by the appellant in the original suit, being of subsequent dates, without the seal impression on them, are all fabricated. The 10th Section XIXth Regulation of 1793 clearly declares that after the 1st of December 1790 it was not in the power of any person except the Governor General in Council to grant land exempt from payment of revenue, which the documents filed in the original suit shew to be, consequently, null and void if even genuine, which they are not. Under the above circumstances, it is ordered, the appeal to be dismissed, with costs chargeable to the appellant, the decision of the principal sudder ameen is affirmed.

THE 31ST MAY 1848.

No. 11.

*Regular Appeal from a decision passed by Syed Ashruf Hoscin,
Second Principal Sudder Ameen, dated 6th November 1845.*

Bhagringhee Sahee and Goordeibnarain Sahee, (Defendants,)
Appellants,

versus

Brij Lall Sing, (Plaintiff,) Respondent.

THIS was a suit for the recovery of Company's rupees 1,270-10, being the principal and interest on bond for 1,001 rupees, dated 24th Badoon 1249 Fuslee, to be discharged at the end of Phalgun 1250 Fuslee, signed by Hurruknarain Sahee and Bhagringhee Sahee, and attested by Goordeibnarain Sahee, who was consequently sued as defendant.

The defendants, Bhagringhee Sahee and Goordeibnarain Sahee, denied the claim *in toto*, and asserted the bond to be a fabrication,

that Hurruknarain Sahee was in Calcutta, and notice had not been issued to him there. Hurruknarain Sahee filed no answer.

The second principal sudder ameen passed a decision in favor of the plaintiff, relieving Hurruknarain Sahee from liability, and decreed the amount sued for to be paid by Bhagringhee Sahee and Goordeibnarain Sahee, they having signed the bond and took the money as proved by evidence of witnesses: order regarding the alteration of the date of the vend of the stamp in which the bond is written, will be passed hereafter.

Against this decision the defendants appealed urging, that Hurruknarain Sahee, one of the defendants, being at Calcutta, the notice, &c., have not been served on him. The principal sudder ameen should have compared their hand writing with the signatures on the bond, which was not effected. The alteration of the date of sale of the stamp on which the bond is written is effected by the respondent, contrary to the second paragraph of Construction No. 572, a decree has been passed.

Respondent answered: Hurruknarain Sahee having been relieved from liability, the objection urged regarding him is of no utility. The matter of alteration of the date of sale of the stamp having been enquired into, was proved to have been a deception of the appellants, and a muchulka was taken from Hurdeibnarain Sahee.

COURT.

The respondent as plaintiff adduced three witnesses to prove his claim. The first witness, Ruttun Singh, deposed that Bhagringhee Sahee and Hurruknarain Sahee signed the bond, that Brij Lall Singh brought the money from the house, and the money was examined there: on interrogation he stated he had never seen the party before, and did not know who signed the bond. The second witness, Cheita Singh, deposed, previous to his witnessing the bond he enquired where Hurruknarain Sahee was and deputed his khidmutgar, who was shewn to that person's temporary abode, the khidmutgar came and said Hurruknarain Sahee had given instruction to his son Goordeibnarain Sahee to sign the bond for him, the money was brought by the brother of the plaintiff, whether in one or more bags he did not recollect, but it was carried to the back of the house to a goldsmith's shop, who examined the money. The third witness, Dunmun Sahoo, acknowledged he was a goldsmith, and had come to Mozufferpore in a foudarec case, and resided temporarily with another person, the money was brought to him in two bags, which he examined. The signing of the bond is not correctly deposed to by the two witnesses, and those two, each deposed different persons brought forward the money, and one deposed it was examined where the bond was signed, the other at the back of the house in a goldsmith's shop. That the third witness, who examined the money had no shop there, having come to Mozufferpore ten-

porarily in a foudjaree case. Owing to these discrepancies the respondent has failed to establish his plaint; therefore, ordered, decree for appellant, with costs chargeable to the respondent, and the decision of the second principal sudder ameen reversed.

THE 31ST MAY 1848.

No. 796.

Regular Appeal from a decision passed by Syed Ashruf Hoosein, Second Principal Sudder Ameen, Mozufferpore, dated 2d September 1845.

Gyah Ram Taqoor, (Plaintiff,) Appellant,

versus

Heera Lall Misser and Rampurshun Misser, (Defendants,) Respondents.

THIS suit was for the possession of the temple of Kaleejee and others, situate in the city of Durbungah, together with 11 biswas of land whercon the temples are erected, and 44 beegahs situate in several villages and pergunnahs appertaining to the said temples. Action laid at Company's rupees 1,552-6.

The plaint purports that Sunker Taqoor, a Bengalee, acquired the temple and the lands. He had three chellahs or pupils, Rhamun Misser, Summon Misser, and Doorgah Taqoor, a Bengalee. After the demise of Sunker Taqoor, Rhamun Misser became the principal, with whom was associated Doorgah Taqoor who assisted to perform the rites to the idol. Both these having died, Summon Misser assumed the principal, and he died on the 25th of Cheit 1249 Fuslec, without any heir. Plaintiff, being chellah or pupil of Doorgah Taqoor, came in possession; afterward the respondents disputed possession, which being carried to the foudjarry, the magistrate on the 23d of September 1842 directed the plaintiff to sue in the dewanny adawlut.

The defendant Heera Lall, for self and as guardian to his minor brother Ram Purshun Misser, pleaded: Rhamun Misser and Summon Misser were both his uncles were chellahs or pupils to Sunker Taqoor, who gifted the whole property to Rhamun Misser, who adopted Heera Lall in 1233 and died, and Summon Misser with their sanction performed the rites at the temple; and from the collector's enquiry regarding the person who was entitled to the daily pension, it was proved he, Heera Lall, was entitled thereto. The pupil of Doorgah Taqoor never held possession.

The principal sudder ameen dismissed the case, on the grounds the evidence of the plaintiff's witnesses proved the claim to be false, and from the papers of the collectorate enquiry the plaintiff's name is not discoverable.

The plaintiff appealed. The defendants plead they are in possession from a hibah, or deed of gift, which is not, and when called on

to produce it was unable to do so, and in a former case of Summon Misser it was deemed false: without enquiry into these circumstances the case has been dismissed.

Respondent answered the documents filed have proved their right, and being in possession of the disputed property it was not necessary to file hibanaueh or deed of gift, and plaintiff has no claim through Rhamun Misser and Summon Misser.

COURT.

The first point of enquiry is whether the appellant established his claim in the original suit: if that be not effected, it will be unnecessary to enter into the matter how the respondents came into possession. The witnesses of the plaintiff deposed that all three, that is, Rhamun Misser, Summon Misser, and Doorgah Taqoor, appointed the plaintiff chellah, which is contrary to the specification in the plaint, which is merely that Doorga Taqoor appointed the plaintiff chellah. The plaint does not specify the month, date, or year, the appointment took place, nor were the witnesses able to state those particulars. With respect to possession and dispossession, one witness deposed, on the demise of Summon Misser the plaintiff granted him a pottah for some trifling quantity of land, the rent of which was forcibly taken by the defendants; and another witness deposed, after the plaintiff had for some days performed the rites to the idol Heera Lall beat and turned him out. These circumstances are not sufficient to establish the claim of the plaintiff, and who failed to come forward when the collector issued a proclamation for all opponents to Heera Lall's claim to the priesthood and pension to the Doorgajee and Kalleejee, and make his claim known in the case of Heera Lall *versus* Summon Misser. On a copy of a report of the moonsiff of Durbungah the collector has passed an order that, after the demise of Summon Misser, Heera Lall, the son of Sectaram Misser, a former poojaree, is to succeed to that office. Under the above circumstances the appeal is dismissed and the decision of the principal sudder ameen affirmed, costs chargeable to the appellant.

ZILLAH TWENTY-FOUR PERGUNNAHS.

PRESENT : ROBERT TORRENS, ESQ., JUDGE.

THE 15TH MAY 1848.

*Appeal from a decision passed by Moulvee Myenooddeen Sufdar,
Additional Principal Sudder Ameen, on the 26th of April 1847.*

Mahomed Rezah, son and representative of Mahomed Sabeir,
deceased, and Sheikh Mahomed Hazoor, (former Plaintiffs,)
Appellants,

versus

Gooroopersaud Chowdry, Ramguttee Naug, and others, (former
Defendants,) Respondents.

To be upheld in the possession of 2 beegahs 17 cottahs of lakhiraj land, valued, with trees cut down and appropriated, at rupees 298.

Plaintiffs alleged that they held the abovementioned quantity of land, rent-free, in the mouzah of Oothurhauth, pergunnah Awarpoor. Nevertheless the defendants, Gooroopersaud Chowdry and Ramguttee Naug, who are talookdars of Baraset, have dispossessed them, and levied rent direct from the ryots, the defendants Boodie and Maherallee, residents on the ground. In answer, the two talookdars abovementioned, of Baraset, allege that the plaintiffs have no right to hold the land at all, rent-free or otherwise. They say it is part of their talook of Baraset, which they purchased at a sale held by the collector for the recovery of arrears of Government revenue due by their predecessor. The two ryots mentioned by them are residents on the ground, and liable to them for rent.

The additional principal sudder ameen dismissed the case, as he considered that it was not proved that the land was lakhiraj. He stated in his decision that there was no necessity to ascertain whether the ground was a part of the talook of Baraset, or of Oothurhauth.

The plaintiffs appeal from this decision, and submit that a previous decree passed in the moonsiff of Kuddumgatchee's court will show that the ground was their property; and they urge that the documents they filed will prove their right to hold the ground rent-free.

I do not concur with the additional principal sudder ameen that there was no necessity to ascertain and declare in his fysala whether the land was situated in the talook of Baraset, or in that of Oothurhauth. The ground being declared to belong to, and form part of the assets of Baraset, it is plain that the assets of Oothurhauth are liable to diminution by this decision. Before arriving at it, I consider the additional principal sudder ameen should have ascertained, by a local enquiry, whether the 2 beegahs 17 cottahs which forms the ground of this action is situated in the talook of Baraset or in that of Oothurhauth. I therefore remand the case in order that a local enquiry on this point may be made. The plaintiffs will thus have an opportunity of making the talookdars of Oothurhauth defendants in this case, if they wish to do so, by giving a supplementary plaint. In deciding this case the lower court will expressly state whether the possession of the plaintiffs is proved or not, previous to the defendants having made the demand for rent.

THE 15TH MAY 1848.

Appeal from a decision passed by Roy Hurrochunder Ghose Bahadoor, Principal Sudder Ameen, on the 1st of May 1847.

Aga Mahomed Mehudy, (former Plaintiff,) Appellant,
versus

Shazadah Burhanuddeen Mahomed and Roopchand Mookhopadhy, (former Defendants,) Respondents.

FOR rupees 1,208, 2 annas, 13 gundahs, 1 cowrie, 1 krant, due on an instalment bond.

This action was instituted because plaintiff stated that on the 20th of November 1843, the defendant borrowed from him rupees 3,600, on an instalment bond, of which the defendant liquidated rupees 2,500, according to endorsement on the bond, leaving a balance of 1,100 rupees due, which defendant declines to pay.

In answer, the defendant admitted having given the bond for rupees 3,600, but alleged that only 2,500 rupees were paid to him, and that the rest of the amount was deducted as bonus, or discount as it is described in the defendant's answer; this, the defendant alleges, the law exonerates him from paying. Roopchand was sued as the broker employed by the other defendant, and answers that he did negotiate the loan for the shazadah, of rupees 2,500 only.

The principal sudder ameen, after hearing the evidence and considering the documents filed, dismissed the case. He stated his opinion that the plaintiff had made the deduction described by the defendant as bonus, which opinion he formed, he observes, more from the probabilities of the case than from the evidence of the witnesses.

In appeal, the plaintiff submits that the evidence of some of the witnesses did show that though the sum claimed was deducted from the consideration given for the bond, but two of those who so deposed were persons whom he, the appellant, had, previous to their being subpœnaed, declined to examine, as they were the defendant's dependants. The plaintiff (appellant) submits that the defendant (respondent) had admitted in a letter to the superintendent of Mysore Princes, of whom the defendant (respondent) is one, that the debt was due, and now he cannot come in and deny it. The answer to this petition of appeal was put in. The defendant's (respondent's) vakeel asserts that though he did write the letter referred to, yet the statement of the deduction on account of bonus is true. The appellant would not agree to the terms offered by the respondent, and therefore he, the respondent, avails himself of the law to defeat this claim.

Referring to the papers of this case, I observe that the letter mentioned by the parties is addressed to Mr. Turnbull, late superintendent of Mysore Princes; it bears date the 15th of September 1845: it is from this respondent, Shazadah Burhanuddeen. The respondent thus expresses himself: "Mirza Mehudy, one of my creditors, from whom I had borrowed in November 1843 the sum of rupees 3,600, but of which the some of rupees 2,500 had been paid, leaving a balance due of rupees 1,100;" and in the following part of this letter the defendant offers to pay 15 rupees per mensem, until the said 1,100 rupees is paid. In my opinion the admission contained in this letter defeats the statements contained in the defendant's (respondent's) answer, and upsets the evidence taken in this case on his part. I must be guided by the admission made in his letter which I have quoted; and I therefore decree this appeal for 1,100 rupees, with interest from date of plaint.

THE 19TH MAY 1848.

Appeal from a decision passed by Roy Hurrochunder Ghose Bahadur, Principal Sudder Ameen, on the 4th of May 1847.

Mark Lackersteen, (former Plaintiff,) Appellant,
versus

Casseenath Ghose, Kaidarnath Neogee, grandson of Seebram Ghose, deceased, Bistennath Ghose, Sreemuttee Debea, widow of Madhub Chunder Chatterjee, deceased, and others, (former Defendants,) Respondents.

FOR possession of 2,000 beegahs of land situated at Dappa, pergunnah Calcutta, with mesne profits. Suit laid at rupees 2,815, 16 gundahs.

The plaintiff stated that he purchased the above property at a sheriff's sale in Calcutta, on the 18th of Srabun 1251, or 1st of

August 1844, according to the bill of sale, which property had belonged to Seebram Ghose and Bistennath Ghose, against whom a decree had been passed in the Supreme Court, in favor of one Nubkisten Seal. After he had got possession by the sheriff's bailiff, the plaintiff was turned out in consequence of a decision being passed in favor of Casseenath Ghose, the defendant, under Act IV. of 1840, who in that case was plaintiff, against Lackersteen and Madhub Chunder Chatterjee, late husband of Sreemuttee Debea. Now the plaintiff seeks for the land he purchased, and the reversal of the decision under Act IV. of 1840.

In answer, the defendant, Sreemuttee Debea, states that her husband, or herself, had nothing to say to the land claimed by the plaintiff, and that her husband did not dispossess any one from his land. None of the other defendants filed any answer.

The principal sudder ameen dismissed the case as the documents filed by the plaintiff did not show, nor did the parol evidence, that the persons, as whose property the sheriff sold the ground, had any right to it.

The plaintiff appeals and submits that the receipts for rent and the evidence of the witnesses show that Seebchunder Ghose was the original possessor of the property claimed, whereas the sheriff's bill of sale and the plaint mentioned Seebram Ghose was so. He submits that the names are often used one for the other. An answer to this petition is filed by the defendant, Sreemuttee Debea, to which I do not intend more particularly to advert. It appears that it was not the intention of the principal sudder ameen to completely close the door of further redress to the plaintiff, though the principal sudder ameen mentions that the case is dismissed. In the event of any error, or omission, occurring by mentioning the name of Seebram instead of Seebchunder, it will be considerate to nonsuit instead of dismissing the case. By so doing he may have an opportunity of bringing another suit for the ground, and of remedying any error with regard to the name of the person he now calls Seebram, or any other error committed by him.

THE 22D MAY 1848.

Appeal from a decision passed by Roy Hurrochunder Ghose Bahadur, Principal Sudder Ameen, on the 18th of May 1847.

Taramunee Dossee and Birmomye Dossee, (former Defendants,)
Appellants,

versus

Petamber Sreemallee and Degamber Sreemallee, (former Plaintiffs,)
Respondents.

SUIT for the reversal of a decision under Act IV. of 1840, and to obtain possession of 8 beegahs, 13 cottahs, 8 chittacks of ground, with wassilat, laid at rupees 3,000.

The plaintiffs sued in the lower court stating that a decision had been passed in the foudjarree court of Howrah, under Act IV. of 1840, (wherein Birmomye and Taramunee were plaintiffs,) whereby they were dispossessed of 8 beegahs, 13 cottahs, 8 chittacks of ground, situated in Sulkeah, pergunnah Pykan, which now they seek to have reversed and to be declared proprietors of that ground. For they say they are the legal surviving heirs of their father, Jugomohun Sreemallee, who was the owner of 13 beegahs of land. He died leaving four sons, the two plaintiffs and their brothers, Neelamber, husband of Taramunee, and Ramkisten, husband of Birmomye, who died before his father, and who had been converted to Christianity. The two last named sons are dead; and the plaintiffs say their widows, who are without issue, cannot inherit their husbands' property. The plaintiffs allege that no deed was left by their father, at all devising any of his property. Plaintiffs allege that Taramunee is entitled to the ground, which had been her husband's, during her life time.

The defendants, Taramunee and Birmomye, answered that they are entitled to the ground in dispute, with other property, in accordance with hissanamahs, or deeds of partition, executed by Jugomohun in favor of his children. But Degamber would not agree to the terms in those deeds and did not in consequence benefit by them. Further, by Birmomye it is said that after her husband became a Christian, Jugomohun gave an ikrar confirming the hissanamahs.

There were no hissanamahs filed in the lower court, though the principal sudder ameen took stringent measures to compel the defendants to put them in. The principal sudder ameen decreed that the plaintiffs were to remain in joint possession, as they had been previous to the decision before Act IV. of 1840.

An appeal is preferred by the defendants, who allege that the land is theirs in virtue of the deeds mentioned in their answers. They say the plaint is incomplete, and allege that they could not file the necessary documents in the lower court because the person, Isserchunder Sreemallee, who managed the case for them, died while it was pending. They pray for their documents to be received and enquired into.

The plaintiffs sued for the reversal of a decision passed according to Act IV. of 1840, and to re-obtain possession of the land described in their plaint, which had pertained to their father's estate. The defendants alleged that they have the land as heirs of, and by virtue of deeds executed by, their father-in-law, in favor of their late husbands,—brothers of the plaintiffs. The plaintiffs (respondents) have admitted in this court that Taramunee, the appellant, is entitled to the portion of her husband, without, however, making any admission that any hissanamahs had been executed by Jugomohun Sreemallee, their father, in favor of his sons. The plea that the

appellants, when defendants in the lower court, could not file their documents on account of the demise of their manager of the case, is inadmissible. On different occasions the principal sudder ameen enquired, from the vakeels of the defendants, why their documents and lists of witnesses were not given in; and their pleaders stated they had repeatedly sent for the lists and the documents, and could not get them. Now I decline to receive the list or the documents, as I think they ought to have been filed in the lower court. While this appeal was pending, Birmomye died. On the usual proclamation being issued, no legal heir came forward as her successor in the case. There can be no question, in this case, that the lawful successors of that person are the plaintiffs, she being, at her demise, a childless Hindoo widow. A petition was presented; in this appeal, by Hurrischunder Sreemallee, brother of Birmomye, praying to be admitted as her representative, on the strength of a will left by her, bequeathing the management and possession of her estate, and liberty to devise it to whom he pleased on his death, this document containing certain stipulations regarding the payments of deceased's debts. This is a most extraordinary and unusual deed to file in a court of justice, or for a childless Hindoo widow to execute. In this miscellaneous stage of an appeal case, I deem it inexpedient to admit the petitioner, Hurrischunder, to be the representative of the deceased Birmomye. I have some doubts whether the deed produced by Hurrischunder really was executed by her, for one of the witnesses, Hurrischunder Roy, (of three who deposed to the deed having been executed,) swears to its having been written out according to his (the witness's) dictation and that of one Gopeenauth Nauth, without any rough draft having been prepared, whereas another witness of this document declares that Birmomye caused a rough draft to be prepared, and from it the deed was copied fair. This witness's name is Madhub Nye. Under these circumstances it appears to me fit to leave the petitioner Hurrischunder to bring forward his claim in a regular suit if he wishes. The appellant, Taramunee, has assigned no satisfactory reason for not producing her witnesses in the lower court, or for not filing the hissanaamah, or deed of partition, by which she says she is entitled to a separate moiety of the ground under litigation. I cannot therefore decree her any defined portion* of it. But the plaintiffs (respondents) have this day admitted that she is entitled as heir of her husband to his portion of ground claimed, though they deny that the hissanaamah was executed in favor of her husband, or that any such documents at all were executed regarding the landed property of their father. I therefore modify the principal sudder ameen's decision so far as to award the appellant, Taramunee, joint, or ijmallee proprietorship, during her life time, of a third portion of the 8 beegahs, 13 cottahs, 8 chittacks under litigation. The rights

of Birmomye, as far as this case is concerned, have lapsed to plaintiffs (respondents) by her death; and if Hurrischunder has any claim, under the deed he has now filed, he can bring it forward in a regular suit. In this case no orders can be passed regarding his petition. As the plaintiffs had no objection to make over the share of her late husband to Taramunee, there was no necessity for her to appeal this case, and I see no reason to exonerate her from any costs she may have incurred.

THE 23D MAY 1848.

Appeal from a decision passed by Roy Hurrochunder Ghose Bahadur, Principal Sudder Ameen, on the 15th of May 1847.

Thakore Doss Haldar, (former Defendant,) Appellant,

versus

Hurro Chunder Bose, (former Plaintiff,) and Meish Chunder Biswas, (former Defendant,) Respondents.

SUIT laid at Company's rupees 1,589, 9 annas, to recover possession, with mesne profits, of a garden, containing a tank and dwelling house.

The plaintiff sued to recover possession, with mesne profits, of a garden, containing a tank and dwelling house, comprised in what was bought as six beegahs of lakhiraj land, but which was afterwards ascertained, by a measurement by the revenue authorities, to consist of 9 beegahs and $1\frac{1}{2}$ krants of grounds. It was sold in satisfaction of a decree passed against Gourmunnee Dossee, at the suit of Rugoonauth Doss, in the court of the principal sudder ameen. The land is situated in mouzah Doorgapoor, pergunnah Magoorah. The price paid for the property was 1,400 rupees, and plaintiff alleges that he held possession of the property for one and half years. The sale took place on the 7th August 1838. Plaintiff says he bought the land in the name of a relation, named Meish Chunder Biswas, in whose name the bynamah is.

Thakore Doss Haldar, in answer, stated that the plaintiff was the mooktyar of Kanyeloll Tagore, who was a patron of Gourmunnee Dossee against whom the decree referred to had been given. Thakore Doss employed the plaintiff to buy the property, furnished the funds, and got possession of it. The bynamah in Meish Chunder Biswas's name produced by the plaintiff, was procured by him from his (plaintiff's) mistress, Anundmye, who had got that document pledged to her on account of a loan of 100 rupees made to defendant by her. Sumboo Chunder Haldar and Soodursun Mallee support the statements of Thakore Doss. Meish Chunder Biswas states he has nothing to say to the property, in truth the plaintiff bought it for himself in his (Meish's) name. Bistennath

and Nubeen Chunder Chatterjee say they have nothing to say to the land. Gourmunnee filed no answer.

The principal sudder ameen decreed the case so far that he awarded possession of the property to the plaintiff, but mesne profits only from the date of filing of plaint. He considered it proved that the purchase was made by the plaintiff, from the evidence taken in his court and from enquiry made on the spot by himself, which enquiry confirmed him in the opinion that the plaintiff had got and held possession of the property after he had purchased it.

An appeal is preferred by the defendant, Thakore Doss Haldar, who submits, among other matters, that the plaintiff has not properly valued the suit. The appellant states that in his answer he submitted this plea. Thus, in valuing the stamp duty payable on his plaint, the plaintiff calculated that the yearly wassilat, or mesne profits, were rupees 36, 4 annas, 9 pie. In claiming a restitution of the wassilat from defendants the yearly amount is calculated at 50 rupees per annum. Other pleas, with reference to under-valuation, are urged, which I need not notice as the principal sudder ameen disposed of those pleas in his court. An answer to the petition of appeal is put in, wherein the plaintiff (respondent) says that the pleas regarding under-valuation were all disposed of by the lower court.

This case was instituted to recover possession of lakhiraj land said to consist of 9 beegahs, $1\frac{1}{2}$ krants, with a house, tank, and wassilat, which the plaintiff says he was dispossessed of by the defendants. It is pleaded by them that they did not dispossess the plaintiff, and that he is not entitled to the land, which is the property of the defendant (appellant) Thakore Doss. In my opinion I cannot proceed with the trial of this case. The plaintiff has not properly estimated its value. In paying for the stamp duty he has reckoned the value of the suit at eighteen times the yearly rent of the ground, and this yearly rent, he says is 36 rupees, 4 annas, 9 pie. In claiming restitution for the wassilat enjoyed by the defendants, he estimates the wassilat at 50 rupees per annum. I consider that he cannot allege the wassilat to be a smaller sum when it is to his advantage to pay a reduced stamp duty, and that he cannot again allege the wassilat to be a larger amount when he claims a refund of that item from the defendants. The law enacts that in such cases as the present, the value shall be assumed at eighteen times the annual rent. The rent is the profit issuing yearly out of the land, and the plaintiff claims that profit, or as he describes it to be, "wassilat, that is to say, oothpunno," from defendants at the rate of 50 rupees per annum. The lower court did not notice this part of the defendants' answer, and I must remand the case to that court, where the plaintiff will, if he wishes to avail himself of it, have an opportunity of amending his valuation of the suit.

THE 27TH MAY 1848.

Appeal from a decision passed by Neelmunnee Mitter, Moonsiff of Kuddumgatchee, on the 8th of April 1848.

Deenonath Kurmokar, (former Plaintiff,) Appellant,

versus

Myeschunder Kurmokar, (former Defendant,) Respondent.

FOR 18 rupees, 10 annas, 5 gundahs, due on a bond, including interest.

The plaintiff stated that the defendant borrowed 16 rupees on a bond from him on the 3d of Falgoon 1252, which not being paid the plaintiff sues for the money lent, and 2 rupees, 10 annas, 5 gundahs, interest. The defendant pleaded that he never borrowed the money, that plaintiff on the contrary owed him wages, and that enmity is borne towards him by the plaintiff, which his witnesses can prove.

Consequent on the contradictions apparent in the evidence of plaintiff's witnesses, some of whom were practised witnesses in our courts, and because of the proof of enmity borne against him by the plaintiff, the moonsiff dismissed the case.

The plaintiff appeals, and urges that the evidence proved his claim to be a just one, and prays for a decree.

On consideration of the proceedings in this case, I see no reason to interfere with the moonsiff's decision, and dismiss the appeal.

THE 27TH MAY 1848.

Appeal from a decision passed by Baineemadhub Shome, Moonsiff of Pautterghottah, on the 17th of April 1848.

Isser Chunder Muna, (former Defendant,) Appellant,

versus

Tarachand Mundul, (former Plaintiff,) Respondent.

FOR rupees 29, 2 annas, 10 gundahs, due on a bond, inclusive of interest.

The plaintiff stated that the above sum was due in consequence of defendant having borrowed, and given him a bond for, rupees 21 on the 21st of Assin 1251. The defendant pleaded that he did not incur the debt, and states that the plaintiff bears enmity towards him. The moonsiff believed the evidence of the witnesses to the bond, and considered that the defendant's witnesses did not

make out that the claim was the consequence of plaintiff's enmity. He therefore decreed the case.

The defendant appeals, and submits that the evidence of the plaintiff was unsatisfactory, also that his signature, written in the moonsiff's presence, differed greatly from that on the bond. I can see no reason for interfering with the lower court's decision, and dismiss this appeal.

THE 31ST MAY 1848.

Appeal from a decision passed by Roy Hurrochunder Ghose Bahadoor, Principal Sudder Ameen, on the 18th of June 1847.

Madhub Chunder Sandyal, (former Defendant,) Appellant,

versus

Seetamunnee Debea, and also as the representative of Gopeenee Debea, deceased, (former pauper Plaintiffs.)

Besides the Appellant, there were defendants, in this case, Koochla Bewa, mother of the minor, Juddoonauth Roy, Rajnarain Roy, Kistencommar Myther, Rajkissore Roy, and Cassicanth Chatterjee.

FOR possession of 12 beegahs of lakhiraj land, tank and trees thereon, with wassilat; and for the reversal of a decision under Act IV. of 1840. Suit originally laid at rupees 2,094, 11 annas, 9 gundahs, 2 cowries.

The plaintiffs sued stating that the late Kistenmohun Banerjee, husband of Gopeenee, deceased, (represented by Seetamunnee Debea, widow of Jadubram Banerjee, Kistenmohun's brother,) had bought, from Gopeenath Doss, 24 beegahs of lakhiraj land, situated in two mouzahs, viz. 12 beegahs in mouzah Athgurah and 12 beegahs in mouzah Ekdulleah, (which last forms the cause of this action,) of which Kistenmohun Banerjee obtained possession. Subsequently both the plaintiffs got possession of the land. After the death of Kistenmohun, a case on the part of Government, to resume this lakhiraj tenure, was instituted in the court of the commissioner of the Sunderbunds, and the land was attached. Jadubram Banerjee, husband of Seetamunnee, and brother of Kistenmohun, filed, in that court, certain documents, whereby the non-liability of the tenure to resumption was made apparent, and the attachment was taken off. Jadubram petitioned subsequently to get back those documents: but he died previous to receiving them from the record office of the commissioner of the Sunderbunds. The defendants, Rajnarain Roy and Koochla Bewa, mother of the minor, Juddoonauth Roy, instigated the other defendants to oust the plaintiffs from the 12 beegahs in Ekdulleah, and in consequence a case under Act IV. of 1840 was instituted in the

magistrate's court, wherein Gopeenee and Seetamunnee were plaintiffs. Rajnarain Roy, in that case, stated that the said plaintiffs along with Ramdhun Banerjee, the youngest brother of Kistenmohun and of Jadubram Banerjee, had sold the 12 beegahs to him, and the magistrate referred the plaintiffs to the civil court, instead of putting them in re-possession. When the office of the commissioner of the Sunderbunds was abolished, Gopeenee applied to the collector of revenue for her documents (which had been filed in the resumption case) and the collector called upon the record keeper (the defendant, Rajkissore Roy) of the Sunderbunds commissioner to produce them; but he replied that he had given the said documents to Ramdhun Banerjee before mentioned, but that he could not lay his hands on the receipt of that person, or on the official copies retained of the documents. A report of this circumstance, and of the generally extremely ill-arranged state of the records in the collector's office of the 24-Pergunnahs, was made to the commissioner of revenue, when the matter dropt. Accordingly the plaintiffs sue Rajnarain Roy and Koochla, and Madhub Chunder Sandyal, as he has bought the ground under a deed of sale given by Koochla, and holds possession of it in the name of one Kistencoomar Myther, who also is made a defendant. The plaintiffs further allege that Rajkissore Roy, late mohafiz of the Sunderbunds commissioner's office, did connive with the defendant, Cassicanth Chatterjee, and permitted the documents put in the resumption case, to be given to Rajnarain Roy, and therefore they are sued in this case. The plaintiffs allege that not one of the defendants holds any valid title to the ground, which they pray may be restored to them, and the decision under Act IV. of 1840 reversed. They allege that they both held possession of the ground at the time of the said decision under Act IV. of 1840, and previous to its being passed. While the case was under trial in the lower court, Gopeenee died, Seetamunnee was admitted as her representative and successor in this case, after the usual preliminaries, on the 4th of February 1847.

In answer Rajnarain Roy (who does not say what is the connexion between him and Koochla Bewa) and Koochla, mother of Juddoonauth Roy, say that the deeds connected with this property, which had been filed in the commissioner's office, were given to Koochla by the plaintiffs, Gopeenee and Seetamunnee, as well as by Ramdhun, (who succeeded as proprietors of the land,) and those three proprietors sold the 12 beegahs in dispute to Koochla, for the minor, Juddoonauth Roy, her son. These defendants allege that the plaintiffs have over-valued this suit, which ought to be brought in the sudder ameen's court, instead of that of the principal sudder ameen.

Madhub Chunder Sandyal filed no answer in the lower court. Kistencoomar Myther says, in his answer, that his purchase of

the ground was on his own account. Rajkissore, the mohafiz, denies that he colluded with any of the parties, to make over the documents. He made them over to Ramdhun Banerjee, as the representative and relation of the plaintiffs. The defendant, Cassicanth Chatterjee, filed no answer.

The lower court passed a decree in favor of the plaintiffs, awarding possession of the disputed ground, with wassilaat, amounting to rupees 296, which was all that the principal sudder ameen considered to be proved to be yielded from the ground. This sum he decreed Madhub Chunder Sandyal to pay, as it was proved that he was the possessor, and purchaser from Koochla, of the ground, in the name of Kistencoomar Myther. He awarded the defendants, except Cassicanth, to pay costs in the proportion that the amount decreed bore to the sum claimed by plaintiffs.

Madhub Chunder Sandyal appeals from this decision : and submits that he did not consider it necessary to file an answer in the lower court, because the statements contained in the answer of Kistencoomar Myther in the lower court were sufficient to show that he, Madhub Chunder Sandyal, had nothing to say to the case. In his petition of appeal the appellant points out various reasons rendering the judgment of the lower court liable to modification as far as it concerns him. The respondents' pleader, Moonshee Surroop Chunder Ghose, submitted that an appeal from this appellant cannot be heard under the Sudder's Circular No. 141, of the 12th of March 1841, and the precedent published in the Bengalce Gazette of the 2d of May 1848, Radha Beebec, appellant, *versus* Bodha Mehton and others, respondents.

The circular above quoted rules that if a party appealing has wilfully neglected to attend in the lower court, the appeal of such a party ought to be dismissed. That the neglect to attend in the lower court was wilful, is evident from the appellant's own petition of appeal, where he says that he relied on Kistencoomar Myther's answer to exonerate him from the plaintiff's claim. By the precedent quoted by the respondents' vakeel it would be admissible, in ordinary cases of *ex parte* decision, to refer a suit back to the lower court to try whether a party failing to attend in the first instance could justify the default. This default was wilful and intentional. There can be no justification under the appellant's statement that his reliance on the appearance and answer of a co-defendant in the lower court was his reason for not attending there. I have only to observe further that I see nothing in the lower court's decision which would render a modification of that decision requisite, in the case of this appellant. He says that he was not made a defendant in the petition of the plaintiffs to be admitted to sue as paupers. I have referred to that petition and found he was made a defendant in it. I must, under these circumstances, dismiss this appeal.

THE 31ST MAY 1848.

Appeal from a decision passed by Roy Hurrochunder Ghose Bahadur, Principal Sudder Ameen, on the 18th of June 1848.

Koochla Bewa, mother of the minor Juddoonauth Roy, and Rajnarain Roy, (former Defendants,) Appellants,

versus

Seetamunnee Debea, (former Plaintiff,) Respondent.

THE appellants, Koochla Bewa, mother of Juddoonauth Roy, the minor, (mentioned in the preceding appeal,) and Rajnarain Roy, were defendants in the preceding case. Pending this appeal Rajnarain Roy died; and Koochla Bewa petitioned to be admitted as his representative, because, she says, she was his concubine, or, as she describes it in her petition of appeal, his "rakhito bebee." It seemed to be very questionable how, under Hindoo law, this petition could be acceded to, and the pundit was requested to state whether the appellants' application was admissible. The pundit has stated, in his bywustah, that the application cannot be complied with. I therefore will proceed with this appeal on the petition of Koochla alone.

It is submitted in this appeal, that there were no reasons for the lower court to saddle her and Rajnarain Roy with the expences of the case in common with the other defendants. The principal sudder ameen did not believe the kubala filed for her, Koochla, to be a genuine document, which deed she alleged was executed by Gopeenee, Seetamunnee, and Raudhun Banerjee, when the ground was bought from them. The principal sudder ameen's reasons for discrediting this deed were, because there were erasures and alterations apparent in it, because the witnesses could not say who wrote it, because the vender of the stamp paper on which it was written, was the vender of stamps stationed at the Sudder Board, where Madhub Chunder Sandyal (who, the principal sudder ameen considered, was proved to be the present possessor of the ground) is employed as peshkar, and because the husband of Seetamunnee was described in the kubala to have been Jadubchunder, instead of Jadubram Banerjee. With respect to the erasures, it is answered, they were made to correct errors. As to the vender of the stamp, on which the kubala was written, being the vender at the Sudder Board's office, the appellant urges that he, the vender, sold the paper in his lodging at Bhowanipoor. The substitution of the name of Jadubchunder for Jadubram is an error.

The first witness, who was examined to prove the kubala filed for Koochla, the appellant, which she said was given by Gopeenee,

Seetamunnee, and Ramdhun Banerjee, was Rajchunder Udhikarree. He says he was a subscribing witness to it. He does not mention where the stamp paper was obtained whereon the deed was written. He says it was executed in *Koochla's* favour; but in reality the deed purports to be in favour of Juddoonauth, the minor. The witness says that both the sellers and females are women of respectability, *purdah nusheens*, yet he alleges that they both went to put Koochla in possession. It is apparent from the witness's evidence that the ground in dispute is very fruitful and valuable, far exceeding the price, rupees 100, which, he says, was paid for it. The witness is unable to name who was the writer of the deed, and he states that the kubala was copied out fair, from a rough draft which had been made of it. The next witness of the kubala filed for Koochla, is Pctumber Bagdee, who says that the deed of sale was written out *at once*, without any reference to a rough draft. This witness is a subscribing witness. The next was not a subscribing witness, he merely was present when the alleged sale was effected. He says that there are two hundred trees on the ground, and twenty or thirty clumps of bamboos. Nevertheless he says he was a witness to the sale of the 12 biggahs containing also a tank, sold for 100 rupees. This witness admits that he has often given evidence in the courts of justice, but cannot remember how often. All these witnesses say the deed of sale was written at Bhowanipoor, yet the stamp on which it is engrossed was sold by the vender of the Sudder Board in Calcutta, where Madhub Chunder Sandyal, the person shown in the lower court to be the most interested in this case, is peshkar. It appears from the endorsement on the paper that it does not mention the name of the purchaser, as is the custom when mofussil venders sell stamp papers. The deed is dated the 4th of Chyete 1250; but this date has evidently undergone an alteration. It besides appears to me very unlikely that the sale ever took place as alleged by the defendants, for the price obtained for this valuable parcel of lakhiraj ground was rupees 100 according to the deed of sale filed for Koochla, the appellant, nevertheless she, in her answer in the lower court, distinctly stated that the true value of the 12 biggahs under litigation was rupees 800, and objected to the plaintiff's valuation of the suit. The deed of sale filed for Koochla had been registered upwards of two months after its execution, but the registry of a deed cannot weigh in its favor, unless its authenticity be established to the satisfaction of the court wherein it is produced. Here no such authenticity has been established. Under the view taken by me in this case, I consider that I must dismiss the appeal, and that appellants' statement of the ground having been sold is altogether without foundation.

THE 31ST MAY 1848.

Appeal from a decision passed by Roy Hurro Chunder Ghose Bahadur, Principal Sudder Ameen, on the 18th of June 1847.

Kistencoomar Myther, (former Defendant,) Appellant,
versus

Sectamunnee Debea, (former Plaintiff,) Appellant.

RAJKISTEN ROY was the next of the defendants, in the case described in the two preceding Nos., who appealed from the principal sudder ameen's order; but as he was sued because he was instrumental, or connived at, the improper delivery of the title deeds placed in the record office of the commissioner of the Sunderbunds, and not as one claiming to be a purchaser of the ground, I deem it more convenient to defer the consideration of his appeal until I decide the appeal preferred by Kistencoomar Myther, which is the next on the appeal file to Rajkisten's. He, Kistencoomar, was sued in the lower court, because it was alleged by the plaintiffs, he was the fictitious purchaser of the parcel of land, claimed by plaintiffs, in the name of Madhub Chunder Sandyal. The principal sudder ameen held him, Kistencoomar, along with other defendants, liable for costs. His petition of appeal states (what all the defendants who appeared in the lower court alleged in their answers) that the ground had not solely belonged to Kistenmohun Banerjee, but was the joint property of that person, and his two brothers, Jadubram Banerjee and Ramdhun Banerjee. The appellant urges that when these plaintiffs and Ramdhun sold the ground to Koochla, for Juddoonauth Roy, they caused their attorney to have the deed of sale registered by the register of deeds; and that the principal sudder ameen ought to have taken evidence to show that the mooktyarnamah, under which the registry was effected, had been duly executed by them. This was not done in the lower court. The appellant submits that the sale to him by Koochla, mother of Juddoonath Roy, the minor, was made after the decision under Act IV. of 1840, upholding her, Koochla, in possession of the ground; which decision took place on the 30th of July 1844, the sale to appellant having taken place on the 24th of Srabun 1251, corresponding with the 7th of August 1844. The sale, appellant alleges, was a *bona fide* one to him; and was not on account of Madhub Chunder Sandyal. The appellant now prays for possession of the ground in virtue of that purchase. It is submitted that, in the case under Act No IV. of 1840, the respondents had alleged that the two brothers, Kistenmohun and Jadubram, were joint proprietors in this land, whereas now it is said that only Kistenmohun was so. Neither statement, it is urged, is true; for the proprietors were Kistenmohun and Jadubram, (succeeded by their respective widows, Gopeenee and Seetamunnee, the plaintiffs, after their demise,) and Ramdhun Banerjee, their brother: Ram-

dhun with the said two widows sold the ground. It is submitted by the appellant that Seetamunnee cannot become the representative (kaem mokam) of Gopeenee in this case according to law. For Gopeenee claimed as sole proprietor, her husband's brother's widow (ja) is not legally Gopeenee's heir; the legal heir, it is alleged, is Kistenmohun's nephew on his sister's side. The vakeel of this appellant submits also that when the resumption case was pending in the Sunderbunds commissioner's court, Jadubram stated that the land was his sole property.

In this appeal I can see nothing to induce me to decide in the appellant's favor. For the reasons given in deciding the appeal preferred by Koochla, I disbelieved the statement that she had acquired any right on Juddoonauth's behalf to the ground she claimed, by purchase or otherwise, consequently this appellant's claim, founded on a purchase from Koochla, cannot be upheld. It was not sought by this appellant, when he was a defendant in the lower court, to have the witnesses of the mooktyarnamah, under which authority the registry was effected, examined before the principal sudder ameen. I see no necessity to call for the attendance of those persons. I observe on referring to the stamp paper, on which the kubala filed by the appellant is written, that it, as well as the deed filed for Koochla, was sold by the vender at the office of the Sudder Board of Revenue, where Madhub Chunder Sandyal, the defendant, who was proved in the lower court to be present possessor of this ground, was peshkar. This coincidence in the place of sale and in the vender of both stamp papers is extraordinary, and tends to support the opinion of the principal sudder ameen regarding Madhub Chunder Sandyal, the defendant, the peshkar of that Board, being mainly interested in this case, and in having the alleged purchases of Koochla, (for Juddoonauth Roy, the minor,) and of this appellant, upheld.

As respects the plea that Seetamunnee cannot succeed or represent the deceased plaintiff, Gopeenee, along with whom Seetamunnee also was plaintiff, this appellant had presented (on the 27th instant) a petition stating that Gopeenee and Seetamunnee stated in the plaint that the property in dispute was acquired by Kistenmohun Banerjee, husband of Gopeenee. It is prayed that a bywustah may be called for, from the pundit, to know whether Seetamunnee can succeed Kistenmohun in any part of the property so acquired; also whether, when Gopeenee and Seetamunnee have writtgn in their plaint, that the property pertained to the estate of Kistenmohun, and that both are (at the time of plaint) in possession of the property, can Seetamunnee succeed to it on Gopeenee's demise, or to any part of it? If so what portion, and what portion would accrue to Gopeenee at her husband's death? Further, if the three brothers, Kistenmohun, Jadubram, and Ramdhun, were

the proprietors, will the widow of one brother, all three having died without issue, inherit? With respect to this petition I have to remark that the appellant permitted the lower court to admit Seetamunnee as Gopeenee's representative, without any objection or interlocutory appeal being preferred to that admission, which was ordered on the 4th of February 1847, the present appeal was preferred on the 21st of July last, and I consider that if any party were dissatisfied with the order of February, an interlocutory appeal would have been more convenient than stating the objections now. I have to observe also that Gopeenee, the plaintiff, alleged that the co-plaintiff, Seetamunnee, was possessor of the property with her; and both plaintiffs sought for the reversal of the decision under Act IV. of 1840, wherein they had been plaintiffs also. The answers of those defendants, who appeared in the lower court, distinctly admit Seetamunnee, as widow of Jadubram Banerjee, to be a *proprietor* of the land; and when no persons, as Gopeenee's heirs, have come forward with objections, I do not think that any interference with the rights of Gopeenee's heirs can take place by my admitting Seetamunnee to succeed in this case to the other plaintiff Gopeenee. Though the usual proclamation was issued in the lower court, no one (until the 27th of this month) came forward claiming to be Gopeenee's legal heir. The main question at issue is whether the decision under Act IV. of 1840, ought to be upheld or not; and there is no question between Gopeenee's heirs and Seetamunnee. In fact the petition, to which I have alluded, of the heirs of Gopeenee, by name Kalleedoss Mookerjee and Gourmunnee Debea, states that they agree to Seetamunnee being admitted as Gopeenee's representative in this case. It is admitted by the appellant that those relations are Gopeenee's heirs—they are her nephew and niece. I deem it unnecessary to go into the respondent's answer in this appeal; and under the circumstances I have considered, I think there is no necessity to call for a bywustah from the pundit. In the appeal preferred by Koochla, I gave my opinion that her claim was unfounded, and that the possessors and proprietors said by the defendants to have sold the disputed property, under the deed of sale dated the 4th of Chyete 1250 B. S., were proved not to have sold it. In allowing this case to proceed, and Seetamunnee to be the representative of Gopeenee in it, no hardship can accrue to the defendants, whose title is, in consequence of the invalidity of the sale to Koochla's son, Juddoonauth, bad and insupportable. The nephew and niece of Gopeenee, who petitioned on the 27th, agree to the case proceeding by Seetamunnee's being admitted to succeed Gopeenee in it as sole plaintiff (respondent.) There can be no injury to the interests of those persons by my allowing this, or to the interests of any other persons who may claim to be her heirs. I accordingly dismiss this appeal.

THE 31ST MAY 1848.

Appeal from a decision passed by Roy Hurro Chunder Ghose Bahadur, Principal Sudder Ameen, on the 18th of June 1847.

Rajkissore Roy, (former Defendant,) Appellant,

versus

Gopeenec Debea, and Seetamunnee Debea for self, and admitted as Gopeenec's representative after her death, (Plaintiffs,) Koochla Bewa, mother of the minor Juddoonauth Roy, and others, (Defendants,) Respondents.

THIS appellant was a defendant in the case mentioned in the three preceding numbers. He is described in that case as having been mohafiz in the court of the commissioner of the Sunderbunds, and is sued because the plaintiffs alleged that he made over, or connived at making over, certain documents and title deeds to Koochla, the defendant, without the authority of the plaintiffs, whose property they were, and in whose behalf they had been filed in the court of the commissioner of the Sunderbunds. The appellant repeats in his petition of appeal that he did deliver the documents filed in the case under Regulation II. of 1819, in the commissioner's court, to Ramdhun Banerjee; and the appellant alleges that that person's receipt for them was given into the commissioner's office. He therefore submits that the lower court should not have held him liable, for costs, in common with other parties, who were defendants, and from this liability he appeals. In his answer, in the lower court, this appellant made no mention of any receipt being given by Ramdhun Banerjee to him. The nuthee in the case tried under Regulation II. of 1819, was called for by the lower court: therein a receipt was filed for the documents claimed, which bore the name of Ramdhun Banerjee, now deceased. This receipt is witnessed by the defendant (deceased) Rajnarain Roy, among others. It is admitted by all the parties that the deeds were filed by Jadubram Banerjee, husband of Seetamunnee, in the case under Regulation II. of 1819. After his (Jadub's) death his heir was his widow. It was a dereliction of duty on the part of the mohafiz of the commissioner of the Sunderbunds to give those documents to any one except the person who filed them, or the heir of that person, or his or her authorised mooktyar. I consider therefore that the copy of the receipt filed by this appellant in no way avails the appellant, even if I regarded it to be genuine. When I see the name of the defendant, Rajnarain Roy, in this case, as one of the attesting witnesses to it, I have a great suspicion that it is not a genuine receipt. Besides, it is customary for a party seeking to get back deeds, filed in any of the courts, to present a petition for them, and to give a receipt on the petition when they are delivered. No such petition or receipt is produced in this case.

It is my opinion that the delivery of the documents (which are mentioned in the plaint) to any party except the person who filed them, or his heir, or his or her authorised mooktyar, had greatly facilitated the defendants in keeping the plaintiffs out of their property. The appellant has admitted that he did not deliver those deeds to any duly authorised person. Besides the witness Rajnarain Roy, deceased, the late defendant, the names of Madhub Chunder Bose, and of Byrub Chunder Myzoondar are written on the receipt. On the 17th of June last, it was admitted by the appellant that the first named is a regular and a practised witness for documents in the courts of this zillah, and the other witness is described to reside in Rajshahye, where Madhub Chunder Sandyal's birth place and property is situated. The appellant stated to the principal sudder ameen that he did not know who the third witness, Rajnarain Roy, was. The appellant in the lower court made no application for the attendance of those witnesses. No "shoonasye," or recognition, of the recipient of the deeds is to be seen on the copy of the receipt filed, as is usual when documents are delivered from the record offices. In the body of the receipt it is purported that the receipt is given by Ramdhun Banerjee, whereas the signature of Ramdhun purports to be given on account of Jadubram Banerjee, his brother. To the principal sudder ameen this appellant admitted that, according to practice, proof of Ramdhun Banerjee being the heir of Jadubram ought to have been taken by him, previous to delivering the deeds from the record office, but in this instance he dispensed with that rule, because he said he was acquainted with Ramdhun Banerjee. I therefore see no reason whatever to exonerate the appellant from paying costs in a case which his conduct, by placing documents in the hands of their opponents, has been so instrumental in obliging the plaintiffs to institute.

ZILLAH BEERBHOOM.

PRESENT: F. CARDEW, ESQ., JUDGE.

THE 3D APRIL 1848.

Case No. 1 of 1848.

*Regular Appeal from a decision passed by the Moonsiff of
Doobrajapore, Moulvee Atta Alee, 6th December 1847.*

Sheikh Mahomed Bheekhun, (Defendant,) Appellant,

versus

Bukronath Udheekaree and Radhanath Udheekaree, (Plaintiffs,) Respondents.

THIS suit was instituted under Section 8, Regulation VIII. 1831, on the 11th January 1847, to procure the withdrawal of an attachment of distraint.

The attachment was issued against the plaintiffs' property by Bamachurn Mundul, gomastah on the part of Sheikh Mahomed Bheekhun, (appellant,) the zemindar of lot Ukbulpore, to recover an alleged arrear of rent for 1253 B. S., amounting to rupees 44-1; and plaintiffs disputed the demand on the ground that they held in lot Ukbulpore only two beegahs of *mal* land at a *jumma* of one rupee, which they had paid for 1253, and that the rest of the land occupied by them was rent-free.

The zemindar, in answer, contended that the plaintiffs held in the lot 33 beegahs 16 cottahs of *mal* land, at a *jumma* of rupees 45-5-4; and that plaintiff, Radhanath Udheekaree, had acknowledged the arrear demanded.

To substantiate the demand the defendant produced only two witnesses, whose evidence, unsupported as it was by documentary proof, the moonsiff did not consider worthy of confidence: he therefore decreed the suit in favour of the plaintiffs, whose statement was established by several witnesses, and no sufficient grounds having been shown for interference with the decision, I confirm it, and dismiss the appeal with costs.

THE 4TH APRIL 1848.

Case No. 2 of 1848.

*Regular Appeal from a decision passed by the Moonsiff of Doobrajapore,
Moulvee Atta Alee, 3d December 1847.*

Sheik Mahomed Bheekhun, (Defendant,) Appellant,

versus

Anund Mundul, (Plaintiff,) Respondent.

THIS suit was instituted under Section 8, Regulation VIII. 1831, on the 24th November 1846, to try a demand for rent.

An attachment of distraint having been issued against the plaintiff's property by Heeralal Mundul, gomashah, on the part of Sheikh Mahomed Bheekhun, (appellant,) the zemindar of lot Ukburpore, to recover an alleged arrear of rent for 1253 B. S., due up to the *hist* of Kaytik, to the amount of Company's rupees 63-2, the plaintiff entered into the prescribed bond, with security, and instituted this suit to try the demand, which he disputed on the grounds that he held no lands in lot Ukburpore direct from the zemindar, the lands in his possession, to the extent of beegahs 84-13, being held by him in sub-tenure from Ramchund Singh and Hurischund Singh, *mookurureedars*, to whom he paid rent.

The zemindar, Sheikh Mahomed Bheekhun, in answer stated that he was put in possession of lot Ukburpore in 1250, in execution of a decree of court, and having measured the estate at the commencement of 1253, he found in plaintiff's possession beegahs 76-6-17-2 of land, for which plaintiff executed a kubooleut, in Asar of that year, at a jumma of Sicca rupees 95-7, or Company's rupees 101-6, and the attachment was issued against his property in consequence of his having failed to pay up the rent.

Ramehund Singh and Hurischund Singh, who were made defendants in the suit, filed an answer in support of the plaint, stating that the land in plaintiff's possession was part and parcel of their *mookururee* land, the subject of dispute in a suit instituted against them in the principal sudder ameen's court by Sheikh Mahomed Bheekhun, to recover arrears of rent for 1249 and 1250, which suit was decided in their favour up to appeal.*

* *Vide Decisions of the
Zillah Court of Beerbhoom
for 1846, page 88.*

The moonsiff, being dissatisfied with the evidence of the two witnesses examined in support of the kubooleut mentioned in the answer of the defendant, Sheikh Mahomed Bheekhun, for reasons fully detailed in his decision, and considering the plaintiff's statement established by the documentary and oral evidence adduced by him, decreed the suit in his favour; and being of opinion that no sufficient grounds have been shown to impugn the correctness or justness of the decision, I confirm the same, and dismiss the appeal with costs.

THE 4TH APRIL 1848.

Case No. 7 of 1848.

Regular Appeal from a decision passed by the Moonsiff of Dhekabaree, Neel Madhub Mookurjea, 2d December 1847.

Moulvee Gholam Sufdar, (Defendant,) Appellant,

versus

Gour Huree Dutt, Koonja Beharee Dutt, and Gunga Huree Dutt, (Plaintiffs,) Respondents.

THIS suit was instituted by respondents, on the 12th November 1846, to recover possession of a third share of a mango tree, situated in mouzah Sreerampore, and the value of the mango fruit for the season of 1253 B. S., on the allegation that they purchased the share of the owner, Ram Churn Mundul, in the month of Agrahun 1249, and that they were dispossessed under orders of the gomash-tah of the village in the month of Bysakh 1253.

Moulvee Gholam Sufdar, (appellant,) the zemindar of mouzah Sreerampore, in answer, denied Ram Churn Mundul's right to sell the tree, stating that the tree belonged to his *khas khoinar*, or private lands, and that Ram Churn Mundul had executed a *kubool*-*lecut* in his favor on account thereof.

Ram Churn Mundul, Bustum Churn Mundul, and Rameshur Mundul, the co-sharers in the tree, filed an answer in support of the plaint.

To establish the claim the plaintiffs produced four witnesses, being the hulshana and chokedars of the village, who deposed that the tree was planted by Gooroo Churn Mundul, the father of Ram Churn Mundul, Bustum Churn Mundul, and Rameshur Mundul, and that the father and sons had possession of the tree, enjoying the fruit, without any interference on the part of the zemindar; and the moonsiff, being satisfied with their evidence as to the plaintiffs' right to the share of the tree sued for, and regarding in a suspicious light the *kubool*-*lecut* produced on the part of Moulvee Gholam Sufdar, inasmuch as it was not attested by any of the inhabitants of the village, decreed the suit in plaintiff's favor; and, being of opinion that no sufficient grounds have been shown to impugn the correctness or justness of the decision, I confirm the same, and dismiss the appeal with costs.

THE 5TH APRIL 1848.

Case No. 8 of 1848.

Regular Appeal from a decision passed by the Moonsiff of Sarhut, Sumeenooddeen Ahmud, on the 24th November 1847.

Soophul Singh and Saheb Lal Singh, (Defendants,) Appellants,

versus

Byrub Misr and Puriag Singh, (Plaintiffs,) Respondents.

THIS suit was instituted, on the 3d April 1847, to set aside a decision passed by the collector of Beerbhoom, under Regulation V. 1812.

The plaintiffs stated that they held in mouzah Lagowa, belonging to the ghatwalee talook Deoghurbad, 10 beegahs of land, at a jumma of Sicca rupees 15-8, under a pottah granted by the late ghatwal, Muniar Singh, dated the 18th Asar 1227; that in Magh 1253 the defendants, Soophul Singh and Saheb Lal Singh, issued an attachment of distraint against their property, to recover an alleged arrear of rent to the amount of 15 rupees, upon which they entered into the prescribed bond, with security, and instituted a suit before the collector to try the demand, and, on the 26th March 1847, the collector upheld the attachment on the grounds of default on their part. They therefore instituted this suit, alleging that they had no concern whatever with the defendants, Soophul Singh and Saheb Lal Singh, and that they paid rent to the ghatwal, Sumbodh Singh, who succeeded to the ghatwalee, on the death of his father, Muniar Singh, in the year 1248.

The defendants, Soophul Singh and Saheb Lal Singh, in answer, pleaded that they held possession of the ghatwalee talook, Deoghurbad, jointly with Sumbodh Singh and Purshad Singh; that Sumbodh Singh's father, Muniar Singh, had only a four annas' share in the talook, and the plaintiffs' statement, that they paid rent to him alone, was therefore not true.

The defendants having failed to produce any proof in support of their demand for upwards of three months after the call for proofs had been made, and the plaintiffs' statement having been established by documentary and oral evidence, which showed that they paid rent to the ghatwal Sumbodh Singh alone, the moonsiff passed a decree in their (the plaintiffs') favour; and, being of opinion that no sufficient grounds have been shown to impugn the correctness or justness of the decision, I confirm the same, and dismiss the appeal with costs.

THE 5TH APRIL 1848.

Case No. 9 of 1848.

Regular Appeal from a decision passed by the Moonsiff of Oukhra, Gobind Chund Chowdhree, 24th November 1847.

Mithunee Bibi, guardian on the part of Magunee Bibi, minor, daughter and heir of Poona Sheikh, deceased, (Plaintiff,) Appellant,

versus

Gopeenath Sirkar, decree-holder, Khosal Sheikh, debtor, Ramtunoo Sirkar, Indurnarain Singh, Dwarkanath Sirkar, and Chakur Singh, purchasers, (Defendants,) Respondents.

THIS suit came before me in appeal on the 15th June 1847, when it was sent back to the moonsiff for re-trial, in consequence of irregularity of procedure, (*vide* Decisions of the Zillah Court of Beerbhoom for 1847, page 93).

The original plaintiff, Poona Sheikh, deceased, sued for possession of certain property, consisting of a tank, 4 cottaks of land, and trees, (in which the rights and interests of his brother, Khosal Sheikh, had been sold in execution of a decree of court,) on the allegation that he was entitled to an eight annas' share of the property generally by right of inheritance, and that his brother sold his eight annas' share of the tank to him in the month of Phalgon 1239 B. S.

None of the defendants appeared in the lower court, with the exception of Khosal Sheikh, the debtor, who filed an answer in support of the plaintiff.

The moonsiff now decreed to plaintiff eight annas' share of the property generally under the law of inheritance, but he disallowed the claim to the debtor's share of the tank, on the grounds that the alleged transfer was not supported by documentary proof, and that the evidence of the witnesses, adduced in support of the point, was hearsay; and as no claim was preferred to the property when under attachment, and the right of Poona Sheikh to an eight annas' share had never been denied either by the decree-holder or by the purchasers, he (the moonsiff) charged the plaintiff with costs.

I am of opinion that no sufficient grounds have been shown for interference with this decision, which I hereby confirm; the appeal being dismissed with costs.

THE 6TH APRIL 1848.

Case No. 10 of 1848.

Regular Appeal from a decision passed by the Moonsiff of Doobrajapore, Mouljee Atta Alee, 4th December 1847.

Racerguun Dasya Tantinee, (Plaintiff,) Appellant,

versus

Bholanath Dutt, par, and Khetronath Dutt, podar, (Defendants,) Respondents.

THIS suit was instituted by the plaintiff (appellant,) on the 4th March 1847, to recover from the defendants the sum of 61 rupees, being the value of gold and silver ornaments, alleged to have been deposited with the latter by the former in the month of Agrahon 1252 B. S.

The defendants, in answer, denied the claim *in toto*, pleading that it had been preferred in a spirit of revenge in consequence of a quarrel that they had had with one Kenaram Tantee, with whom plaintiff was on terms of intimacy, and that plaintiff was never known to be possessed of any gold and silver ornaments.

The plaintiff, in reply, stated that the ornaments belonged to a woman, whom her son, Mudhoosoodun Tantee, brought home in the month of Kartik 1252, and were given to her by them; and her

son having subsequently quarrelled with her, she deposited the ornaments with the defendants, lest he should take them back.

The moonsiff, being dissatisfied with the evidence of the witnesses produced in support of the claim, and considering the defendants' statement borne out by the evidence adduced on their part, dismissed the suit as not proved; and being of opinion that no sufficient grounds have been shown for interference with the decision, I confirm it, and dismiss the appeal with costs.

THE 7TH APRIL 1848.

Case No. 11 of 1848.

Regular Appeal from a decision passed by the Moonsiff of Gopalpore, Gopeenath Doss, 26th November 1847.

Umbeekachurn Ghutuk and Bhoobuneshuree *alias* Bhoobun Munee Takooranee, (Defendants,) Appellants,

versus

Seebchund De, (Plaintiff,) Respondept.

THIS suit was instituted by Seebchund De, plaintiff, on the 28th July 1845, to recover from Umbeekachurn Ghutuk and Bhoobuneshuree *alias* Bhoobun Munee Takooranee, widow of Bistochnurn Ghutuk, the sum of Company's rupees 252-8, principal and interest, the amount of money paid as an advance of rent, for lands granted on lease.

The plaintiff stated that on the 17th Magh 1249 B. S., Umbeekachurn Ghutuk (defendant,) and Bistochnurn Ghutuk, (deceased,) gave him a lease of 20 beegahs of (rent-free) bruhmuttur land, situated in lot Ekdala, at an annual rent of Company's rupees 16-4, for a term of 12 years, extending from 1250 to 1261, and took from him the rent of the entire term, Company's rupees 16-35, in advance, under a receipt, which stipulated that "if any one opposed his possession, they (the lessors) would settle the matter, or else return the money:" that he was ousted from the lands on the 25th Jeit 1250, by the lessors themselves, and he therefore sued to recover the money advanced, with interest.

The defendant, Umbeekachurn Ghutuk, in answer, pleaded that, under Construction No. 898, plaintiff could only sue for possession of the land; that he (defendant) did not turn plaintiff out of possession; and that he received from plaintiff, in advance, the sum of 80 rupees only, the rest having been set down on account of interest, which was calculated at the illegal rate of one pice the rupee per mensem.

The moonsiff, on the 26th August 1845, decreed the suit to the plaintiff, on the depositions of three of the subscribing witnesses to the receipt, taken in another suit, relative to a separate transaction

that had occurred between the parties at the same time and place; and the case having come before the principal sudder ameen in appeal, was, in consequence, remanded to the moonsiff, with the concurrence of this court, to be tried *de novo*, with directions to call for and examine the three witnesses, in respect to the specific matter now before the court, *ab initio*, and at the same time to take the evidence of the three remaining witnesses, who subscribed to the receipt.

The three remaining witnesses had been duly summoned on the part of the defendant, Umbeekachurn Ghutuk, and had neglected to attend to give their evidence; but the moonsiff now declined calling upon the defendant to produce them, on the ground that the order of the principal sudder ameen did not apply to him, as he had neglected to observe a previous order, dated the 5th August 1846, directing him to appear in court in person, to give evidence on oath that the witnesses were material, he (the moonsiff) therefore called upon the plaintiff alone to produce the witnesses required by the principal sudder ameen, and the plaintiff only produced two of those who had been previously examined in the other suit, on whose evidence the moonsiff again decreed the suit in plaintiff's favor.

I observe that the moonsiff's order, dated the 6th August 1846, directing Umbeekachurn Ghutuk to appear in court in person, to give evidence on oath that the witnesses were material, was illegal, for Section 6, Regulation IV. 1793, which law is now made applicable to moonsiffs by Act XVII. of 1845, does not require the prosecutor's oath exclusively; and the moonsiff should have been guided by Constructions Nos. 159 and 1126, on the point. And as the principal sudder ameen's order was a general one, and was more especially applicable to the defendant, inasmuch as on him lay the *onus probandi*, the moonsiff's proceedings must be regarded as incomplete. I am, therefore, under the necessity of again remanding the case for re-trial, with directions to the moonsiff to give the defendant every facility, consistent with law and practice, to establish his pleas, and to decide the suit justly.

THE 8TH APRIL 1848.

Case No. 14 of 1848.

Regular Appeal from a decision passed by the Moonsiff of Dhekkabaree, Neel Madhub Mookurjea, December 6th 1847.

Raj Muneo Mundulane, (Defendant,) Appellant,

versus

Kishoree Mundulane and Rungoo Mundulane, (Plaintiffs,) Respondents.

THIS suit was instituted by the plaintiffs, on the 8th December 1846, to recover from Raj Muneo Mundulane, defendant, (appel-

lant,) the sum of Company's rupees 63-7-2, being the value of gold and silver ornaments, alleged to have been deposited with the latter by the former, on the 12th Asar 1253 B. S., pending the adjustment of a quarrel.

On the 30th March 1847, the defendant filed an answer, containing several pleas in refutation of the claim, which she denied *in toto*, and stating in reference to the delay in her attendance that she was not aware of the suit before, the process of the court not having been served on her.

On the 18th November 1847, (after a delay on the part of the court of upwards of seven months, caused by an useless enquiry unconnected with the merits of the case,) the defendant was called upon for proofs in support of the answer; on the 23d November she filed a list of the names of eleven witnesses; on the 29th two witnesses appeared after issue of summons and were examined; and on the 6th December the moonsiff decreed the suit in favor of the plaintiffs, rejecting the defendant's pleas, amongst other reasons, because she had defaulted in not having produced her remaining witnesses.

This precipitancy, in the moonsiff's proceedings is the more glaring after the great and unnecessary delay on his part as noticed above; and being of opinion that the defendant had not been allowed a reasonable time to procure the attendance of her witnesses, I reverse the moonsiff's decision, as being incomplete, and remand the case for further enquiry and decision *de novo*.

THE 15TH APRIL 1848.

Case No. 16 of 1848.

*Regular Appeal from a decision passed by the Moonsiff of Kundera,
Mirza Ushkuree Fikrut, December 27th 1847.*

Purumsookh Race, Purbuttee Soondree Dibya, Jadhoomunee Dibya,
and Bimola Soondree Dibya, (Plaintiffs,) Appellants,

versus

Haradhun Huldar, (Defendant,) Respondent.

THIS suit was instituted by the plaintiffs (appellants,) on the 6th April 1847, to fix the rent on 2 cottahs of land, situated in mouzah Bajitpore, orf Koorugram, the right to the revenue of which had been awarded to them in a suit instituted under Section 30, Regulation II. 1819.

The moonsiff nonsuited the plaintiffs, on the grounds that the service on the defendant, of the notice prescribed by Sections 9 and 10, Regulation V. 1812, was not proved, inasmuch as one of the witnesses differed from the other three in respect to the persons who were present at the time of service.

In the reasons of appeal it is contended that as the case was not one for enhancement of rent, the Regulation quoted did not apply, and there was consequently no necessity for issuing the notice.

There is no law that I am aware of, requiring the issue of a notice preliminary to an action to fix the rent of land resumed under Section 30, Regulation II. 1819, although the spirit of the regulations appears to warrant the practice. I however consider the service of the notice in this case proved by the evidence of the witnesses, who are unanimous on the point, the discrepancy, noticed by the moonsiff, being, in my opinion, non-material. I therefore reverse the decision appealed against, and remand the case to the lower court to be tried on its merits.

THE 15TH APRIL 1848.

Case No. 17 of 1848.

Appeal from a decision passed by the Collector of Beerbhoom, December 9th 1847.

Nudei Mundul, Shishteedhur Mundul, Bheem Mundul, and Kartik Mundul, (Defendants,) Appellants,

versus

Bhoobuneshuree Dasya, (Plaintiff,) Respondent.

THIS suit was instituted under Section 30, Regulation II. 1819, by respondent, Bhoobuneshuree Dasya, the zemindar of lot Mud-dunpore, on the 25th August 1847, to recover from Nudei Mundul, Shishteedhur Mundul, Dwarkanath Mundul, Bheem Mundul, and Kartik Mundul, the revenue of four tanks, situated in mouzah Beer Singh, comprising, by measurement, beegahs 13-10. The suit was valued at rupees 149, the estimated selling price of the tanks.

The defendants, Nudei Mundul, Shishteedhur Mundul, Bheem Mundul and Kartik Mundul, (appellants,) in answer, pleaded, *inter alia*, that the suit was undervalued; that the whole of the owners of the tanks had not been made defendants; and that the defendant, Dwarkanath Mundul, had died since the institution of the suit.

The collector decreed the suit to the plaintiff (respondent) without taking any notice of the above pleas; and as the suit was wrongly valued under Construction No. 576, which requires "that the petition of plaint shall be written on stamp paper of the value prescribed for rent free-lands," or in other words, eighteen times the amount of annual rent by computation, and not according to the estimated selling price, I reverse the collector's decision, and nonsuit the plaintiff, charging him with all costs.

THE 15TH APRIL 1848.

Case No. 18 of 1848.

*Regular Appeal from a decision passed by the Moonsiff of Soory,
Koolodanund Mookurjea, 30th December 1847.*

• Gora Chand Das, Byragee, (Plaintiff,) Appellant,

versus

Nuffer Das Byragee and Byrubnath Surma, (Defendants,) Respondents.

THIS suit was instituted by the plaintiff (appellant,) on the 10th November 1846, to recover from the defendants the sum of Company's rupees 15-5-10, principal and interest, on a bond alleged to have been executed by the latter on the 27th Kartik 1252 B. S.

The defendants, in answer, denied the bond, and pleaded that the suit had been got up against them in the plaintiff's name by one Bindrabun Das, with whom they were at variance.

The moonsiff, being dissatisfied with the evidence adduced in support of the claim, and considering the defendants' plea borne out by the circumstances of the case and the evidence of witnesses examined on their part, dismissed the suit; and, being of opinion that no sufficient grounds have been shown to impugn the correctness or justness of the decision, I confirm the same, and dismiss the appeal with costs.

THE 17TH APRIL 1848.

Case No. 168 of 1847.

*Regular Appeal from a decision passed by the Moonsiff of Kundera,
Mirza Ushkuree Fikrut, 21st June 1847.*

Rezun Mullik, (Defendant,) Appellant,

versus

Mahomed Uslah, (Plaintiff,) Respondent.

THIS suit was instituted by respondent, on the 11th December 1846, to recover from appellant the sum of Company's rupees 27-12, principal and interest, on a bond executed by the latter, under date the 17th Asar 1242 B. S., in acknowledgment of a loan

of 13 rupees, advanced by him, through respondent's *karpurdaz*, or manager, Gour Mohun Mundul.

The appellant, in answer, admitted having executed the bond, and pleaded that he received only 11 rupees in consideration thereof; and that in payment of the debt he delivered to respondent's khansaman (house steward,) Sheik Gholam, 4 *kahuns*, 11 *pun* of straw, at the rate of 6 *puns* the rupee, under a receipt, bearing date the 25th Chyete 1242, which respondent subsequently acknowledged.

The moonsiff decreed the suit to respondent in full of his claim, rejecting appellant's pleas, on the grounds that it was proved by the subscribing witnesses that the amount of the bond was paid, and received in full; and that the evidence of the witnesses produced in support of the receipt for the straw was unworthy of confidence, because as the money was borrowed through Gour Mohun Mundul, the payment through the khansaman was improbable—because the khansaman by the witnesses' own account had no authority to receive the straw in payment of the debt, his master having told him to realize the money—and because one of the witnesses, Gunesh Choonaree, whose age was set down in his deposition at 25, could only have been thirteen years old when the transaction took place.

It appears from the evidence of appellant's witnesses that respondent was constantly absent from home on service, (this fact is admitted by his vakeels, who give it as the reason for the delay in instituting the suit,) and he in consequence directed his khansaman to realize the money due on the bond; the latter accordingly demanded payment, and appellant having stated his inability to meet the demand until he could dispose of his straw, the khansaman agreed, rather than wait, to accept the straw in payment. The straw was delivered accordingly at respondent's own house, and the receipt, which the khansaman gave on the following day was acknowledged by respondent some time afterwards on his return home, in the presence of two witnesses. There is nothing improbable in this story, which was related by the witnesses in a simple and consistent manner, without any appearance of their having been tutored; the receipt itself also bears no mark of suspicion; and I therefore see no reason for doubting the truth of the plea, that the straw was delivered and admitted by respondent in payment of the debt: and in respect to the age of the witness, Gunesh Choonaree, whom the moonsiff omitted to question on the point, which he should have done since he made it the ground for rejecting his testimony, twenty-five years was evidently a mistake, appellant has been allowed to produce him in this court, and from his appearance he is clearly upwards of 30.

I therefore amend the moonsiff's decision, by admitting the payment pleaded, and decree the appeal with proportionate costs.

THE 18TH APRIL 1848.

Case No. 19 of 1848.

*Regular Appeal from a decision passed by the Moonsiff of
Doobrajapore, Moulve Atta Alee, 6th December 1847.*

Goolzar Khan, Waris Khan, Kalee Putanee, Pucha Putanee, and
Chutee Putanee, (Plaintiffs,) Appellants,

versus

Seebnath Chukurbuttee, (Defendant,) Respondent.

THIS suit was instituted by the plaintiffs, as the heirs of Afzul Khan deceased, on the 12th January 1847, corresponding with the 29th Poos 1253 B. S., to recover from the defendant, Seebnath Chukurbuttee, possession of 1 beegah, 5 cottahs of rent-free land, situated in mouzah Bunpatura: value, at eighteen times the amount of annual rent, rupees 43-3-2.

The plaintiffs stated that in the month of Chyte 1240 B. S., their ancestor, Ufzul Khan, borrowed of defendant the sum of 7 rupees under a bond, and gave him possession of the disputed land, from the commencement of 1241, at an annual rent of Sicca rupees 2-4, on mortgage, in payment of the debt. That defendant having instituted a suit in the moonsiff's court, under No. 61 of 1846, to recover from them the amount of the bond with interest, they mentioned the fact of the mortgage in their answer, pleading that the debt had been liquidated by the rent; defendant in his reply acknowledged having possession of the land, stating that he had acquired it by purchase; and although they produced two witnesses, Meer Alee Buksh and Bukshoo Khan, by whose evidence the plea was fully established, the moonsiff decreed the suit. That defendant did not file any deed of sale in that suit, and since he had sued for the money acknowledging possession of the land, such possession was clearly fraudulent; and they therefore instituted this suit to recover their right to possession, waiving their claim to mesne profits.

The defendant, in answer, to the above stated that the plea advanced by the plaintiffs in the suit No. 61 of 1846, was rejected as not proved, and he, in consequence, got a decree, against which plaintiffs preferred no appeal, and the object of the present suit was to set aside that decision after it had become final; that he acquired the proprietary right of the disputed land, comprising 1 beegah 10 cottahs, and not 1 beegah 5 cottahs, as stated in the plaint, under a deed of sale, executed by Ufzul Khan and Muhur Khan, in the month of Chyte 1235,* from which time he had held undisturbed possession, and the claim was consequently barred by lapse of time.

The moonsiff dismissed the suit under Section 16, Regulation III. 1793, and Construction No. 999, without trying the merits, being of opinion that, as the plea advanced by plaintiffs in the former suit was rejected as not proved, the present claim could not be heard.

The decision passed in the former suit only went the length of determining the negative point that the disputed land was not held by defendant on mortgage, in payment of the debt then sued for: it was, therefore, no bar, in my opinion, to the plaintiffs' claim to possession as the hereditary proprietors of the land being heard, if there were no other cause against it; but the claim is clearly barred by lapse of time by the plaintiffs' own showing, for they admit that defendant has had possession from the commencement of 1241, or upwards of 12 years before the date of institution of this suit, and I, therefore, uphold the moonsiff's decision on that ground, and dismiss the appeal with costs.

THE 24TH APRIL 1848.

Case No. 160 of 1847.

Regular Appeal from a decision passed by the Moonsiff of Soory, Koolodanund Mookurjea, 21st June 1847.

Gopal Mundul, (Defendant,) Appellant,

versus

Sree Chund Ghose Mundul, (Plaintiff,) Respondent.

THIS suit was instituted by respondent, on the 10th February 1846, to recover from appellant the sum of Company's rupees 31-10, principal and interest, being money advanced as a loan.

The respondent stated in the point that he was on terms of friendship with appellant, and used to lend him money as he required it: that he lent him in the month of Jeth 1252 B. S., the sum of 29 rupees without taking from him an acknowledgment in writing, on his verbal promise to repay the same in the month of Kartik following, which he had neglected to fulfil.

The appellant, in answer, denied having borrowed the money, stating that the suit had been instituted in collusion with his brother, Deenoo Das, who was actuated by ill feelings towards him, in consequence of his having been refused a share of his patrimony on his adopting the profession of a byragee; and that so far from being on terms of friendship with respondent, he (appellant) had had a quarrel with him, for the last two years, and a special cause of enmity arose in the month of Asin 1252, in a dispute regarding the irrigation of land.

On the 6th March 1847, the moonsiff dismissed the suit for default, an order which was overruled in summary appeal; he now decreed it in favor of respondent by awarding to him the principal of the debt claimed with interest from the date of institution of suit, on the grounds that the loan of the money was satisfac-

torily proved by the evidence of the witnesses produced, one of whom, Byrub Gope, was appellant's sister's son; and that appellant had failed to establish his pleas.

The evidence of the witnesses adduced in support of the claim is made up of bare assertions to the effect that the money was lent to appellant as alleged; there is nothing in it, in my opinion, to induce belief as to its truthfulness. On the other hand the fact of the existence of ill feeling between the parties, arising out of a quarrel between appellant, and his brother Deenoo Das, whose part respondent had espoused, is undeniable, the evidence of appellant's witnesses being supported by the record of a foudaree case, which was preferred by appellant, under date the 19th November 1845, against Deenoo Das, the respondent himself, the witness Byrub Das, another witness examined on respondent's part, named Mothoor Mundul, and others. Under these circumstances I have no confidence in the claim. I therefore reverse the moonsiff's decision, and decree the appeal to appellant, with costs in both courts.

THE 24TH APRIL 1848.

Case No. 162 of 1847.

Regular Appeal from a decision passed by the Moonsiff of Sarhut, Sumeenooddeen Almud, May 25th, 1847.

Byjnath Sahoo, (Defendant,) Appellant,

versus

Kurun Sahoo, (Plaintiff,) Respondent.

THIS suit was instituted by respondent on the 19th November 1846, to recover from appellant possession of a strip of land, 19 cubits long by $1\frac{1}{2}$ cubit broad, on the allegation that it was part and parcel of a plot of land comprising the site of his (respondent's) shop in the Chandnee bazar at Deoghur, and that he was dispossessed of the same by appellant, his next door neighbour, on the 25th Bhadro 1252 B. S., on his attempting to erect a wall separating the two tenements.

The appellant disputed the claim, which the moonsiff decreed in favor of respondent, after making a local enquiry.

The parties have now come to an amicable adjustment of the dispute, having filed before the moonsiff, to whom the case was referred by this court for further enquiry, a *razeenamah*, whereby they agree to divide the disputed land between them; and I dispose of the case accordingly, in amendment of the moonsiff's decision: each party to bear his own costs.

THE 25TH APRIL 1848.

Case No. 232 of 1847.

Regular Appeal from a decision passed by the Moonsiff of Dhekkabaree, Neel Madhub Mookurjea, September 14th, 1847.

Ramdhun Mundul, (Defendant,) Appellant,

versus

• Ram Koomar Race, (Plaintiff, Respondent.

THIS suit was instituted by respondent on the 15th December 1846, to recover from appellant the sum of Company's rupees 14, 14 annas, principal and interest, on a *kistbundee*, or instalment bond, dated the 3d Sraon 1252.

The plaint set forth that the bond was for 21 rupees payable by instalments at the rate of 1 rupee a month, and it was stipulated that all payments to render them valid should be recorded on the back of the deed; that appellant had wiped off rupees 6-2 of the debt by working for respondent as a day laborer between the month of Asin 1252 and Jeth 1253, leaving due the principal sum of rupees 9-14.

The appellant, in answer, acknowledged the bond and pleaded a payment of 2 rupees in cash, under a receipt bearing date the 1st Bhadro 1253, which was not entered on the back of the bond in consequence of respondent having been unable to produce the deed at the time, because, as he asserted, his son had gone out with the key of the box in which it was kept; and also that he had given in labor the sum of rupees 13-2, leaving due the sum of rupees 5-14 only.

The moonsiff decreed the suit in full of the claim, rejecting the appellant's pleas on the sole ground that, as the alleged payments were not endorsed on the bond, it would be contrary to the conditions of the deed to admit them.

I consider the payments pleaded by appellant proved, and under the circumstances mentioned in the answer accounting for the non-endorsement of the payment of 2 rupees, which circumstances are fully borne out by the evidence, and with advertence to the almost impossibility of appellant's getting his daily labor so recorded, I do not think the condition attached to the bond can be held to affect the merits of the case. I therefore, in amendment of the moonsiff's decision, admit the appellant's pleas, and decree the appeal with costs.

THE 26TH APRIL 1848.

Case No. 239 of 1847.

*Regular Appeal from a decision passed by the Moonsiff of Kytha,
Wujecooddeen Mahomed, September 27th, 1847.*

Gooroo Churn Mundul, (Defendant,) Appellant,

versus

Neetanund Das, (Plaintiff,) Respondent.

THIS suit was instituted, on the 15th December 1846, to recover the sum of Company's rupees 145-9-10, principal and interest, on a bond alleged to have been executed in plaintiff's favor, on the 25th Kartik 1248 B. S., by Gooroo Churn Mundul (appellant,) on the security of Hurnath Mujoomdar (defendant, who has not appealed) in acknowledgment of a loan of 99 rupees.

Gooroo Churn Mundul, in answer, denied to bond and pleaded that he was himself in affluent circumstances and had no occasion to borrow money; that the claim had been set up at the instigation of Bagbut Chund Das, plaintiff's uncle, with whom he has been at variance for the last seven or eight years, and Hurnath Mujoomdar, who was Bagbut Chund Das's servant, was made a party to the suit, in the capacity of security, in order that he might give a color to the claim by filing a *kubool juwab*, or confession of judgment; that plaintiff was living with his uncle in family partnership, and it was therefore most unlikely that he should have gone to him to borrow money under such circumstances; and that moreover on the date of the bond he (defendant) was in attendance at the magistrate's court at Soory, in a case preferred against him by Esan Chund Mujoomdar, who was also a servant of Bagbut Chund Das's.

In his reply, the plaintiff denied the relevancy of the pleas in respect to his uncle, Bagbut Chund Das, maintaining that the money he lent was his own, his uncle having nothing to do with it; he also denied that Esan Chund Mujoomdar was his uncle's servant.

Hurnath Mujoomdar, the alleged security, subsequently filed a *kubool juwab*, acknowledging the correctness of the claim.

The moonsiff decreed the suit to the plaintiff, considering the execution of the bond proved by the evidence of the subscribing witnesses; and he recorded with reference to the defendant, Gooroo Churn Mundul's pleas, that although his witnesses deposed to the existence of a quarrel between him and plaintiff's uncle, Bagbut Chund Das, yet that matter had nothing to do with the present case, for in a previous suit, No. 94 of 1844, instituted by Bagbut Chund Das himself against Gooroo Churn Mundul to recover money due on a bond, the latter preferred a similar plea, which was disallowed by the court, and that decision was not appealed against.

The moonsiff has not investigated this case satisfactorily in my opinion. He has not cleared up the doubt arising from the fact of

Hurnath Mujoomdar, the alleged security's being a servant of the plaintiff's uncle, Bagbut Chund Das, with whom plaintiff was living in family partnership, a fact which is no where denied; he has not disposed of the *alibi* pleaded, nor the point as to whether or not Esan Chund Mujoomdar, whose criminal action against the defendant, Gooroo Churn Mundul, was pending on the date of the bond, had any connection with plaintiff or his uncle. I therefore reverse the decision appealed against, and remand the case to the moonsiff for further investigation and re-trial with reference to the above remarks.

THE 28TH APRIL 1848.

Case No. 242 of 1847.

Regular Appeal from a decision passed by the Moonsiff of Gopalpore, Gopeenath Das, September 27th, 1847.

Ishur Chund Chatoorjya, (Defendant,) Appellant,
versus

Nubeen Chund Chatoorjya, (Plaintiff,) Respondent

Case No. 243 of 1847.

Regular Appeal from a decision passed by the Moonsiff of Gopalpore, Gopeenath Das, September 27th, 1847.

Ramoo Gorain, (Defendant,) Appellant,
versus

Nubeen Chund Chatoorjya, (Plaintiff,) Respondent.

THIS suit, against the decision passed in which the above two appeals were preferred, was instituted by the plaintiff (respondent) on the 23d February 1846, to recover possession of 20 beegahs, 8 cottahs of *maal* land, situated in mouzah Gopeenathpore, pergunnah Salampore, bearing a jumma of Company's rupees 27-8; with mesne profits. Value of suit, 276-9-4.

The plaintiff stated that he engaged the land in question, of the defendant, Ishur Chund Chatoorjya, (who had acquired it at public auction,) on payment of a *bonus* of 39 rupees, under a pottah, bearing date the 21st Bysakh 1250, and sub-let it, on the 29th idem, to the defendants, Ramoo Gorain and Sarthuk Mundul, for a term of one year, at a rent payable in kind, at the rate of 21 measures of paddy a year; that he had paid to Ishur Chund Chatoorjya, the rent for 1250, rupees 27-8, on his receipt, dated the 21st Bysakh 1251, but Ishur Chund Chatoorjya nevertheless turned him out of possession, on the 2d of the following month, in collusion with the sub-tenants, Ramoo Gorain and Sarthuk Mundul,

who at the same time had failed to pay the rent in kind, as agreed to: he (plaintiff) therefore sued to recover possession of the land, with mesne profits for 1250, 1251, and 1252, their value for the first of those years being calculated at the rate agreed to by the subtenants, and for the other two, at the annual produce.

The defendant, Ramoo Gorain, in answer, denied the claim, pleading that he had engaged the land himself of Ishur Chund Chatoorjya, under a pottah, dated the 19th Bysakh 1250; that plaintiff had nothing to do with it and had instituted the suit through enmity.

The defendant, Ishur Chund Chatoorjya, filed an answer to the same effect; and the defendant, Sarthuk Mundul, filed an answer in support of the plaint.

On the 21st May 1847, the moonsiff nonsuited the plaintiff, because he had not entered in the plaint the name of the pergunnah in which the disputed land was situated; but this order was set aside on summary appeal, as being contrary to fact.

He now decreed the suit by awarding to plaintiff, whose case he considered satisfactorily proved by the evidence adduced, possession of the disputed land, on the terms of the pottah, dated the 21st Bysakh 1250, with mesne profits, and costs of suit as follows:—

Against Ramoo Gorain and Sarthuk Mundul.

Value of 21 measures of paddy, the rent in kind, for 1250, at the rate of 5 sulees the rupee,	33	9	6
Interest on ditto,	6	5	10
Ditto, <i>pendente lite</i> ,	7	9	6
Proportionate costs of suit,	6	1	0

Rupees... 53 9 10

Against the three defendants, Ishur Chund Chatoorjya, Ramoo Gorain, and Sarthuk Mundul, jointly.

Value of produce for 1251 and 1252, after deducting one half for the expenses of cultivation,	69	0	0
Interest thereon, <i>pendente lite</i> ,	13	2	0
Mesne profits, <i>pendente lite</i> ,	31	11	10
Proportionate costs of suit,	20	13	10

Rupees... 134 11 8

I concur with the moonsiff in decreeing possession of the disputed land to the plaintiff, whose title to it, under the pottah, is fully established in my opinion.

In respect to the mesne profits awarded, which are objected to, in the reasons of appeal, both as regards the mode of awarding them and their amount, I am of opinion that the rent in kind for

1250, forms the subject matter of a separate action, and that in this suit mesne profits can be awarded only from the date of dispossession, namely, the 2d Jeth 1251; and as plaintiff's witnesses fail to establish the amount of the mesne profits, for their evidence only goes to show by a rough estimate the capabilities of the land and not its actual produce, and as the amount can only be correctly ascertained by a local enquiry,—in amendment of the moonsiff's decision, I award to plaintiff, against the three defendants, possession of the disputed land, and mesne profits from the above date to the date in which he may be put into possession, to be adjusted in execution of the decree, with costs of suit in the lower court. The costs in this court will be made chargeable to each party respectively.

THE 29TH APRIL 1848.

Case No. 24 of 1848.

Regular Appeal from a decision passed by the Principal Sudder Ameen of Beerbhoom, Moulvee Nujumul Huq, 27th December 1847.

Hurish Chund Race and others, (Plaintiffs,) Appellants,

versus

Bahadoor Ali, Ameerun-nissa Bibi, Gholam Meean *alias* Kala Meean, Hosen Buksh *alias* Budloo Meean, Ahmud Alec Shah, Syud Ahmud Alec, and others, (Defendants,) Respondents.

THIS suit was instituted by plaintiffs, as the zemindars of lot Kendooa, pergunnah Kutungah, on the 16th April 1847, to recover from the defendants the revenue of a tank named Naratala, in mouzah Kendooa, comprising with embankments about 5 beegahs and 15 cottahs; on the allegation that it belonged to their (plaintiffs') *khalsa khamar*, or private lands, and that the defendants had no title to hold it exempt from the payment of revenue.

The suit having been referred to the collector, under Section 30, Regulation II. 1819, the defendants, Syud Hosen Buksh *alias* Budloo Meean and Gholam Meean *alias* Kala Meean, filed an answer to the effect that the disputed tank was acquired by their ancestor ages ago, with other land, under *badshahee* grant, as *nuzurat* for the maintenance of the *ustannh* of Gunjlushkur Peer, and had been held rent-free from one generation to another; that the period at which it was acquired is so remote that the original grant was not forthcoming but the tank together with 16 beegahs of land and a *julhuree*, or pond, were registered according to a *sooruthal*, or statement, bearing date the 2d Magh 1202 B. S., which set forth that the documents, under which they were held rent-free, were destroyed by fire previously to the Company's accession to the Dewanny, and a similar registry was made in 1208 under *taidad* No. 3227; that the

tank was recorded in the canoongoe's *chittahs*, in the measurement papers of 1193 B. S., and also in the *bazee-jumeen-duftur*, (register of miscellaneous lands,) as *nuzurat*: it moreover belonged to the *nuzurat* lands of Hât Jan-bazar, the right to hold which exempt from the payment of revenue has been confirmed in a suit instituted on the part of Government; this fact would be proved by the records of that suit, and therefore the plaintiffs' claim was altogether untenable.

The plaintiffs, in their reply, denied the truth of the facts contained in the answer, stating that the measurement papers of 1193 would prove that the disputed tank belonged to mouzah Kendooa, and not to Hât Jan-bazar, with which it had no connection; and that the bare registry of the *sooruthals* was not sufficient to entitle the defendants to hold the tank rent-free.

On the 9th July 1847, the collector sent back the case reporting the disputed tank to be held under a valid rent-free tenure, on the following grounds. That the *sooruthals* of 1202 and 1208, produced by the defendants, showed that the tank was acquired by their ancestor as *nuzurat* under a sunnud granted by Raja Budee-ool-zuman Khan, which was destroyed by fire in 1167 B. S., and as it was duly registered in 1208 under *taidad* No. 3227, the tenure, under Section 2, Regulation XIX. 1793, could not be considered as invalid. That he (the collector) had proceeded to the spot in person and held a local enquiry in the presence of several respectable inhabitants of Kendooa including the plaintiffs' gomashah, all of whom certified to the fact that the disputed tank had been held by defendants for a long period of time as rent-free. That a mere inspection of the tank showed that it belonged to Hât Jan-bazar, for although the record keeper of the collectorate reported that it was not recorded as rent-free either in the measurement papers of 1193 or in the *bazee-zumeen-duftur* prepared by Mr. Sherburpe, and that there was a tank named Naratala entered in the former as *be-waris* (without owner) and described as measuring with embankments $1\frac{1}{2}$ beegah, yet it was clear that this tank could not be one and the same with that which is the subject of dispute, for the latter from its appearance is upwards of $4\frac{1}{2}$ beegahs in extent, and therefore must be the same tank as that recorded in the *sooruthals*, which is described as measuring 3 beegahs. That Hât Jan-bazar had moreover been released from the Government claim to assessment, and consequently the validity of the disputed tenure was unquestionable.

The principal sudder ameen, referring to the above report and to the fact that the collector had satisfied himself by a local enquiry that the disputed tank belonged to the *nuzurat* land of Hât Jan-bazar, dismissed the suit.

I am not satisfied with the manner in which this case has been investigated. The principal sudder ameen has indeed disposed of it irregularly on the bare perusal of the collector's report, without

even recording the grounds on which that report was founded. The collector's arguments for adjudging the disputed tank to belong to the defendants' *nuzurat* lands are not at all conclusive in my opinion, and as he did not take down the evidence of any witnesses, for the statement of the persons mentioned as having been present at the local enquiry was merely verbal, it is altogether impossible for this court to judge of the correctness of the decision appealed against. Regarding therefore the proceedings of the lower court as incomplete, I remand the case to the principal sudder ameen for further investigation, with directions to examine witnesses, the old resident inhabitants of the neighbourhood of the tank, many of whom are doubtless able to depose to the points mooted, to consult the record of the Government suit referred to in the answer, in order to a correct decision on the point as to whether the disputed tank belonged to the *nuzurat* lands of Hât Jan-bazar or not, and to decide the suit *de novo* in such manner as may appear conformable to justice and the regulations.

ZILLAH BEHAR.

PRESENT : T. SANDYS, Esq., OFFICIATING JUDGE.

THE 8TH APRIL 1848.

No. 13 of 1847.

Regular Appeal from a decision of the Officiating Principal Sudder Ameen of Behar, Moulavee Mahomed Ibrahim, dated the 10th of July 1847.

Shaick Mehur Alli, (Defendant,) Appellant,

versus

Khyreeut Khan *alias* Wahid Alli Khan, Mahomed Ali Khan, and Musst. Fyzun, (Plaintiffs,) Respondents.

THE plaintiffs (respondents) sue the defendant (appellant) to cancel a bond, dated 25th Jumad-oola-wul 1258 H. = 5th July 1842, for Company's rupees 1,217-11-3, inclusive of interest, as averred by them to be fictitious and fabricated.

The existence of this bond is alleged to have first come to the plaintiffs' notice in two suits for the right of pre-emption had at the suit of Shaick Mehur Alli, claiming as a purchaser of the four agnas title of Munnoo Khan, in mouzah Nadh, *versus* Jumad Alli, cazee of pergunnah Nurhut, and Imanbux, purchasers of the plaintiffs' or their predecessors' titles. These two suits were dismissed on the 21st of June 1845, as represented by Shaick Mehur Alli to have been adjusted. This bond was not filed in either of these cases, but reference was made to it in Shaick Mehur Alli's declarations, and as immediately denied in Wahid Alli Khan, &c. pleas, dated the 30th November, and 14th December 1844. It had been, however, filed in a case of execution of decree in 1843, and of which further notice will be taken in the sequel.

Whilst these two suits for the right of pre-emption were pending, the plaintiffs instituted the suit, now under trial, on the 27th January 1845.

This bond purports to be a lease of mouzah Nadh, pergunnah Jhurra, to take effect under certain conditions, in satisfaction of advances made under former engagement, executed by the three plaintiffs (respondents,) and the Munnoo Khan above referred to in the two pre-emption cases on his own behalf, and as guardian

of Sabit Alli Khan. Their signatures to this bond appear in one, and the same handwriting, given as that of Deyal Sing. This bond is also witnessed by the following persons.

Shaick Sadut Alli, the writer of the document, Deyal Sing, who signs on behalf of the engaging parties, the three plaintiffs (respondents,) as well as for the witness Mullick Fyzoo.

Mullick Nezam and Mullick Teyka, witnesses, their names signed by Sadut Alli.

Wazeer Alli, witness, name signed by Ramzan Khan, and Rujub Alli, witness, signs with his own hand, but that of Khoodhabux not apparent how.

The officiating principal sudder ameen's decision decrees the suit in favor of the plaintiffs (respondents,) considering the genuineness of the bond as having been altogether set aside by the denial of the subscribing parties, more especially Deyal Sing, whose respectability the appellant (defendant) himself vouched for, as well as by the evidence of Ikbal Alli, vakeel in the sudder ameen's court, and Syud Ushruff Ali and Khoorsheyd Alli, vakeels in his own court. That the mere filing of the bond in a miscellaneous case, such as the execution of decree, Shaick Mehur Alli *versus* Musst. Chukun and Wahid Alli, one of the plaintiffs (respondents,) could not improve it. That although both borrower and lender are residents of pergunnah Nurhut, yet this bond had been registered by the cazee of another pergunnah, viz. that of Jhurra, and that the cazee had been at the pains of endorsing on the bond a descriptive roll of such of the attending, and subscribing parties, a practice he is surprised at, and which he has never noticed before.

The defendants' appeal from this decision makes light of these denials, urging that Deyal Sing had been gained over by the plaintiffs (respondents.) That Khoodhabux denied through enmity. That the Ramzan produced, was not the person who signed for Wuzeer Alli. That the registry of the bond by the cazee of pergunnah Jhurra was correct, the estate pledged, or mouzah Nadh, being situated in that pergunnah. That the evidence of the vakeel, Ikbal Alli, was worthless, seeing that in the execution of decree, Shaick Mehur Alli *versus* Musst. Chukun and Wahid Alli, no opposition to this bond, which had been filed in that case, was set up, notwithstanding that Wahid Alli, one of the plaintiffs (respondents,) was thus a party to that case.

JUDGMENT.

This bond pledges Nadh, pergunnah Jhurra, as security for the engagement: accordingly by Construction No. 14, 29th November 1805, the registry of this document relative to land situated in pergunnah "Jhurra," by the cazee of that pergunnah, was quite correct.

On examining the cazee of pergunnah Jhurra's book, in which this bond is copied, I find that the cazee was always in the habit of entering descriptive rolls of the attending and subscribing parties on all documents of this description. This bond was also registered by the cazee at the sudder station, instead of within the pergunnah of which he was the cazee. He is dead, but the irregularities of the cazees generally, in this and other respects, were subsequently duly noticed. At all events any irregularity in the registry of this bond is not of much immediate moment to the decision of this case.

The merits of this case seem to me to rest on the denials of the subscribing parties to this bond, more especially the important one of Deyal Sing signing on behalf of the engaging parties, and whose denial alone, in the absence of any satisfactory explanation as to the cause of such denial, or other testimony sufficiently creditable to set it aside, must be fatal to the validity of this bond. The signature in the name of Deyal Sing purports to be on behalf of the engaging parties, three men and one female, and the only explanation offered for such a questionable subscription is, that one of the party had inflammation of the eyes and another a bad hand. The execution of so important a document in so lax a manner is unaccountable, except, as supporting the supposition of its being a fabrication, inasmuch as no attempt even has been made to account for such singular neglect. Both parties also are of the class not likely to be negligent in such matters, and moreover were in the position to be scrupulously cautious in their transactions with each other. Their disputes had already taken them into the criminal court. Had the transaction been a real one, it does not seem probable that either party, more particularly the (defendant) appellant, would have been content with a document the signatures to which had been adhibited in such a worthless manner.

The adhibition of the remaining signatures, also, is of a similar character.

Mullick Fyzoo witness's name appears signed by Deyal Sing, which he denies. Khoodhabux, witness, also denies the signature bearing his name. Two signatures, those of Mullick Nizam Alli and Mullick Teyka, witnesses, are in the hand-writing of Sadut Alli, the writer of the document, and that of Wuzeer Alli, witness, by the hand of Ramzan Khan. In the bond Ramzan is styled a resident of Sahibgunge (the sudder station.) He was summoned by the (plaintiffs) respondents, and not the appellant (defendant.) He bore testimony to the effect that the (defendant) appellant had told him, he had made him a witness to this bond without his, Ramzan's, permission or cognizance. On hearing this evidence on the 8th of April 1847, the appellant (defendant) declined questioning him, averring that he was not aware whether this was the identical Ramzan who signed for Wuzeer Alli, witness, or not. Such procedure can only be considered evasive, inasmuch as the (defendant) appellant from

first to last never made any attempt to produce any other Ramzan Khan, and, considering the manner in which the adhibition of the signatures to this bond were being denied, he ought not to have been indifferent to bringing forward every individual in any way connected with its signatures. From the 8th of April until the 10th of July 1847, the date of the decision, there was ample time for him to have taken proper measures to set aside the evidence of the Ramzan Khan, assumed by him to be the fictitious, by the production of the real Ramzan Khan.

The evidence of the remaining witnesses to this bond is in no degree explanatory of the peculiar occurrences, which must have attended its execution, and its general tenor, together with the circumstances of the case, lead me to the conclusion that it is utterly untrustworthy.

Munnoo Khan's transactions with the appellant, (defendant,) and his absence from the present suit, whether collusive or otherwise, can in no degree affect the present trial.

“ The evidence of the vakeels, Ikbal Alli, Syud Ushruf Alli, and Khoorsheyd Alli, persons summoned by the plaintiffs (respondents,) does not seem deserving of the consideration given to it in the officiating principal sudder ameen's decision. The case can best stand on its own merits, independent of their evidence. Ikbal Alli was the (appellant) defendant's vakeel in the execution of decree case in 1843 below noticed, and actually filed this bond, as an interposing party, praying that the (appellant) defendant's title under this bond might be exempted from sale, and orders to which effect were duly passed. He now pretends that he was not aware of the nature of this document. This is impossible: supposing even his carelessness to have been so gross that he did not pay any attention to the nature of the document, he could not have been ignorant of the nature of his own application grounded on this identical document.

This execution of decree was taken out on the 21st January 1843 by Sheik Mehur Alli, the appellant, (defendant) *versus* Musst. Chukun and Wahid Alli, one of the plaintiffs, (respondents) as security. On the 29th of April following, Wahid Alli, urging that the suit had gone against him through default and the tricks of the opposite party, prayed that Musst. Chukun's property might be first sold in satisfaction of the decree. It was not until the 3d of December following that Ikbal Alli, as Sheik Mehur Alli's vakeel in this case, filed this bond. No sale took effect, as this case was struck off the file on Sheik Mehur Alli's petition of the 28th March 1845, representing that Musst. Chukun had paid him the decree in full. Even allowing the appellant (defendant,) therefore, the review of proceedings of such a miscellaneous character, still they tell more against him than in his favour; throughout there is nothing in the proceedings so taken, as would of necessity imply that Wahid Alli, one of the plaintiffs (respondents,) then became acquainted with this bond. It

was filed in a manner behind his back, at a date and stage of the proceedings when it may be said that Wahid Alli's interest in the case was in abeyance, and the closing of the case being kept by Sheik Mehur Alli entirely in his own hands, was effected without any necessity for Wahid Alli's further intervention.

But no sooner were the two suits for pre-emption instituted by Sheik Mehur Alli, Nos. 233 and 261, in September and October 1844, and mention of this bond was made in his declarations in these two cases, than the plaintiffs (respondents) in their replies therein, of the 30th of November and 14th of December 1844, declared this bond to be a forgery, and forthwith instituted the present suit to set it aside, on the 27th of January following, that is, prior to the decision of these two pre-emption suits, which took place on the 21st June 1845. These two decisions also Sheik Mehur Alli kept in his own hands. They were both dismissed on default (Circular No. 52, 11th October 1839,) under Sheik Mehur Alli's petition, of 17th idem, that the suits had been adjusted under sooluhnameh, no such sooluhnameh, however, being filed.

The whole of these proceedings, therefore, instead of being favourable, are unfavourable to Sheik Mehur Alli, the appellant (defendant.) They are without one exception of the fictitious character which seems to accompany him throughout these litigations, and which, under all the circumstances of the case under appeal, afford strong presumption of the fabrication of this bond and the truthfulness of the prosecution.

Had this trial been conducted more energetically in the first instance, I should have felt warranted in directing so much roguery to be dealt with, as it merits, in a criminal prosecution.

ORDERED,

That this appeal be dismissed with costs.

THE 15TH APRIL 1848.

No. 10 of 1847.

Appeal from the decision of the Officiating Principal Sudder Ameen, Moulvee Mahomed Ibrahim, dated 30th April 1847.

Musst. Imamun and Musst. Beybun Koour, (Plaintiffs,) Appellants,

versus

Inaeyt Alli Khan, son of Musst. Phagun, and Beygun, daughters of Imam Alli Khan, deceased, Musst. Kalloo, wife of Shah Urzanee Bucksh, Imam Alli Shah, son of Dilbur Shah, Hoosein Bucksh, self and Musst. Mulleyma and Jan Beebee, deceased,* (Defendants,) Respondents.

CLAIM, in satisfaction of a bond, dated 1st Aghun 1235, (4th November 1827,) for Company's rupees 2,133-5-4, inclusive of inter-

est, given by one of the defendants, Imam Alli Khan, deceased, to the plaintiffs (appellants.)

The bond, however, is of a singular tenor. It describes the borrower as in possession of Chuck Jhuraiya, pergunnah Sumai, by advances under three "zurpeyshgee" documents, which he therein makes over to the lenders, and pledges in security for the loan. These three documents bear the same date, the 16th November 1824, one being by Shah Urzanee Bucksh, to Imam Alli Khan, for rupees 684-4, another by Musst. Mulleyma and Jan Beebee, to Imam Alli Khan, for rupees 981, and the third by Dilbur Shah, to Imam Alli Khan, for rupees 684-1. The period for the recovery of these advances respectively was fixed at 1249 F. S. An acknowledgment is also given on the face of the bond, in the handwriting of one Bundhoolal, purporting to be on behalf of Shah Urzanee, Musstn. Mulleyma and Jan Beebee and Dilbur Shah, describing themselves as debtors to Imam Alli Khan, under the three "zurpeyshgee" documents above referred to, made over by Imam Alli Khan, to the plaintiffs (appellants) in security for the bond, and thus in a manner recognizing their liability, equally with the principal Imam Ali Khan, for the amount of the bond.

The defendant Imam Ali Khan's plea urged, that the claim should be first realized from his *ci-devant* debtors under the zurpeyshgee documents pledged in the bond. The joint one of the remaining defendants, is a general denial of the bond and a declaration of its fabrication as regards themselves.

The officiating principal sudder ameen's decision of the 30th April 1847, decrees the suit against Imam Alli Khan, but releases the other parties as not being liable in the same action with Imam Alli Khan, under the bond whatever remedy may lie against them under separate procedure, and which the plaintiffs must take out as purchasers of "zurpeyshgee" deeds.

Imam Alli Khan has not appealed against this decision, but the plaintiffs (appellants) are dissatisfied with the finding releasing the remaining defendants, on the grounds that, according to the wording of the bond, and the acknowledgment therein, all the defendants are jointly liable, with the principal Imam Alli Khan, for the amount of the bond.

JUDGMENT.

Had the acknowledgment on the bond been of the usual character, the trial would have proceeded as in ordinary cases, in which signature has been affixed to a bond, in recognition of the liability of the subscriber, equally with the principal, for the amount, under Construction No. 1121, of 29th December 1837, and have been decided on its merits. This has not taken place. Indeed there has been no such trial, inasmuch as the acknowledgment is of an unusual kind, being of a documentary rather than a direct personal responsibility.

In accepting such pledges, the plaintiffs (appellants) have knowingly taken with them their corresponding obligations. The validity of the bond cannot of itself alone insure the validity of the zurpeyshgee deeds. No wording or attestation of the bond could convey such power.

The bond assumes the plaintiffs (appellants) hold these documents, and they are filed in this case as in their possession. This in the present stage of the proceedings is the utmost value of the bond as regard these zurpeyshgee deeds. As holders of such document, the plaintiffs (appellants) can claim no greater privileges than possessors of similar documents in general. It rests with them to realize them under adjustment, or try the issue, as provided for such cases, in due course of law. The mere wording of the bond can give them no exemption in this respect. The cause of action in the one instance is totally distinct from the other.

ORDERED,

Appeal dismissed with costs.

THE 20TH APRIL 1848.

No. 27 of 1847.

Appeal against the decision of Moulavee Mahomed Ibrahim Khan, Officiating Principal Sudder Ameen, dated the 27th September 1847.

Baboo Modhnuraen Sing, (Plaintiff,) Appellant,

versus .

Baboo Deyanath Rae and Juykurun Lal, (Defendants,) Respondents.

CLAIM, to cancel a mokurruree potta and obtain possession of mouzas Kujraiyla, Puhurpoor, Assoonee, and Kootobpoor, pergunnah Puhra, consequent on the defendants' default in payments, valued at rupees 2,019-1-4, taken at three times the sudder jumma. Also for the recovery of rupees 2,922-1-2, on account of rents due for 1249, 1250, and 1252 F.

The defendants hold the above named villages under a mokurruree pottah, dated 9th of Ashar 2d, 1235, granted by the plaintiff, appellant's father. The plaintiff obtained summary decrees, dated 30th September 1844, against the defendants, on account of the rents of 1251, and two kists of 1252 F. During the trial of these cases, however, the defendants pleaded that they had repeatedly tendered payments of the arrears due, and on the plaintiff's neglecting to accept them, had petitioned the court to that effect on the within dates.

The plaintiff now only sues for the arrears due, but also seeks to set aside the mokurruree pottah, and recover possession of the villages, simply on the grounds of the defendants being defaulters according to the summary decrees above mentioned.

9th April 1842, = 14th Cheyt 1249.

29th June 1842, = 7th Assar 1249,

23d Novr. 1842, = 5th Aughun 1250.

26th Jan. 1843, = 10th Magh 1250.

The officiating principal sudder ameen decrees so much of the claim as regards the arrears, the same being acknowledged by the defendants, with the exception of the payments of rupees 200-14-3, under 5 dakhilas, which dakhilas, however, were rejected by the principal sudder ameen, and his order in this respect has become final, the defendants never having appealed against it. He also considers it satisfactorily established that the defendants were not wilful defaulters. The remaining portion of the claim to set aside the mokurruree pottah was disallowed, there being no authority for the same under Regulation VII. 1799, as regards a tenure of the kind under trial.

The plaintiff appeals against the latter portion of this decree disallowing the setting aside of the mokurruree pottah. Reiterating the grounds of the defendants having been found defaulters under all the decrees passed, he seeks the cancellation of the mokurruree pottah under Section 15, Regulation VII. 1799, Regulation VIII. 1819, and when questioned further, specifically refers to Clause 4, Section 18, Regulation VIII. 1819. He also produces precedents.

" JUDGMENT.

The question as to the defendants having been wilful defaulters, or otherwise, is immaterial to the point at issue, although it may be observed that the record sufficiently establishes that the first was not the case. The only question before this court in appeal is, the arrears being adjudged due by the defendants, has the plaintiff as zemindar authority to cancel this mokurruree pottah as he would "any lease, farm, or other *limited* interest intermediate between himself and the actual cultivator on account of which the rent may have been claimed?" (Clause 4, Section 18, Regulation VIII. 1819.) The mokurruree pottah was granted by the plaintiff's father, under the powers vested in zemindars conformably to Section 2, Regulation V. 1812, and Section 2, Regulation XVIII. 1812. Now such a tenure being "heritable by its conditions," (Clause 1, Section 3, Regulation VIII. 1819,) is neither a "lease, farm, or other *limited interest*," but, is the exception referred to, in Clause 4, Section 18, Regulation VIII. 1819, cited by the appellant himself, which directs that "such talook will of course be liable to be sold for the arrears which may have accrued upon it," and as further provided by Construction No. 128, 8th July 1813, which prescribes the "sale of the defendants' talook or other *transferable* tenure of the defaulter on application to the court, at the expiration of the year, for which the arrear may have been adjudged." The plaintiff's claim and course of procedure are, therefore, altogether unauthorized, and at variance to the regulations in force.

In such a case, it is vain for plaintiff (appellant) to urge precedents. He has given three local decisions, two of which are not in point, and the third, Raja Himmud Alli Khan, plaintiff, (appellant),

versus Meer Kasim Alli Khan, defendant, (respondent,) although applicable, yet with every deference, it cannot support me in an opinion contrary to what, for the reasons above given, I consider is so clearly provided for by law. The only case of the Superior Court that I find even of a general tendency on the subject at issue is that of Meer Meruk Hossein *versus* Raja Taj Alli Khan, page 273, vol. II. Sudder Dewanny Reports, but the circumstances of the two cases are not analogous, and therefore, as I read this case, it is quite inapplicable as a precedent in the present instance.

ORDERED,

Appeal dismissed without issuing notice to the respondents.

THE 22D APRIL 1848.

No. 3 of 1848.

Appeal Against the decision of Moulavee Mahomed Ibrahim Khan, Officiating Principal Sudder Ameen, dated the 12th January 1848.

Kulloo Mahton, (Plaintiff,) Appellant,
versus

Musst. Oomrow Beebee, Lutchee Mahto, and Nundoo Mahto, heirs of Pooran Mahto, (Defendants,) Respondents.

CLAIM for rupees 1685-10-3, balance due on a bond dated 25th Asar 2d 1243 F. S., July 1836.

This document is of an unusual tenor and is dissimilar to bonds in general. It purports to be an account of a loan of rupees 1494-1 by the plaintiff to Musst. Oomrow, defendant, with the following particulars.

- | | |
|--|--|
| <p>A. Former loan according to note of assignment on mouzah Chooanbar Deegasin, rupees 1125-7-3.</p> | <p>B. Present Loan according to account rupees 368-8½.</p> |
| <p>C. Signed on behalf of Musst. Oomrow by Baboo Deedar Ali Khan.</p> | |

This note of assignment is said to have been given on Pooran Mahto deceased, farmer of Chooanbar Deegasin.

Musst. Oomrow denies the claim, and pleads that the above document under which it is made is fictitious and executed without her authority; that for upwards of ten to fifteen years, she has been at variance with her husband Baboo Deedar Alli Khan; and that she is not in the habit of executing documents without attaching her seal and signature to them.

The other two defendants, Lutchee and Nundhoo Mahtos, plead in support of the plaintiff's claim, that a note of assignment was given on their father Poorun, who held the mouzah in lease from 1243 to 1249 F., but on his decease in 1245 Musst. Oomrow dispossessed them, and when they purposed instituting a suit against her for the same, she forestalled them by collusively effecting the present suit through the plaintiff.

The officiating principal sudder ameen considers the suit to be a fictitious one, instituted through motive of enmity, in collusion with his relatives the defendants Lutchee and Nundoo Mahtos, as, if the lease to which they laid claim did not expire until 1249 F. S., they would have scarcely failed during the period that has elapsed to have taken some steps to protect their own rights, consequent on their dispossession by Musst. Oomrow after 1245, and to produce their title deeds, receipts, &c., and the note of assignment relative to the present suit. That the document itself is of irregular tenor, and as inconsistently described by the plaintiff's witnesses, some describing it as a "tumusook" or bond, others as a "theka peyshgee." That the plaintiff in his declaration says Poorun Mahto died at the end of 1245 F., but a keyfeyut of the darogha of Sherghotty records it as having taken place in Assin 1245, and his witnesses, at variance to both, evidence to his having deceased in 1246 F. For these and other reasons assigned, he does not consider the prosecution deserving of any confidence, and accordingly dismissed it.

The plaintiff, appellant, urges that the evidence in support of his suit is good. That if Pooran Mahto died in Assin 1245, why did not Musst. Oomrow recover the management of the village then? That Musst. Oomrow denies the lease held by Pooran Mahto, but that it is proven by the darogha of Sherghotty's keyfeyut, as well as acknowledged by herself in her petition of appeal of 25th February 1840 in another case, as per copy of the same filed by him. That Pooran Mahto's heirs sought no remedy against their dispossession, rested with themselves, and not with him; and that they have still the option of doing so within the limitation period of twelve years. That through fear of Musst. Oomrow, whose iyots they are, they would not file the note of assignment. That, as to Musst. Oomrow's not executing documents without her seal, he files copy of a vukalutnameh on her behalf dated 21st April 1839, which is without it.

• JUDGMENT.

The plaintiff's document is witnessed by two Mahtos, inhabitants of Chooanbar Deegasin, a putwarree, a Rajpoot, and a mutusuddee, the writer of the document. The last is not forthcoming, but all the others have given evidence. There is nothing in their evidence or the proofs brought forward by the plaintiff,

explanatory of the cause of Musst. Oomrow's signature to the document being in the handwriting of her husband, Baboo Deedar Alli Khan, or capable of counteracting the evidence of Musst. Oomrow's witnesses, who testify to her having been at variance with her husband upwards of ten to fifteen years, and that she was in the habit of executing documents with her own seal and signature. One of Musst. Oomrow's witnesses, Waris Alli Khan, states that Baboo Deedar Alli Khan is dead. The document is neither attested by the register's or cazee's registry. Whether, therefore, as regards the form and tenor of the document, the manner of its execution, or the nature of the evidence brought forward in support of it, I not only consider it undeserving of any confidence, but also that its validity is unproven.

The wording of the document also makes it dependant on the note of assignment; to say nothing of previous transactions and accounts, but not one of which has been produced in proof. When the plaintiff engaged in a transaction requiring the execution of a document so much out of the ordinary course, he did so knowingly and of his own accord, and if this acts to his disadvantage it is of his own choosing. The circumstances of the case within his own control placing him in a suspicious position, his conduct demands more than ordinary scrutiny. The note of assignment is left for his relatives, Lutchee and Nundoo Mahto, to produce, and they cannot do so through fear of Musst. Oomrow, yet by their own plea they were ready to prosecute her for their four years' dispossession, and, as the plaintiff himself observes, the limitation period for their doing so has not as yet expired. These are not the kind of persons likely to withhold the production of any document in court, which might thereby tell to their own advantage, and their attempt in their plea to fix collusion in the case as between the plaintiff and Musst. Oomrow, only the more glaringly brings it home as between themselves and the plaintiff, which every circumstance of the case fully substantiates, and shews that there could be no object in collusion between the plaintiff and Musst. Oomrow, although paramount as between the plaintiff Kalloo Mahto and his relatives Lutchee and Nundoo Mahtos.

Indeed, the institution of this suit, the purport of its document, and the plaintiff's proceedings from first to last, are a complete begging of the question relative to what may become a separate cause of action as between Musst. Oomrow and Lutchee and Nundoo Mahtos. Hence, the stress laid by the plaintiff (appellant) on the date of Poorun's decease, on Musst. Oomrow's acknowledgment of Poorun's lease, proven as he asserts by the grounds of appeal presented by her in the case of 1840, and on the question raised by him that if Poorun died in Asin in 1245 and his lease did not extend to 1249 F., why did not Musst. Oomrow immediately resume the management of the village? It is beyond the province of this deci-

sion to moot the merits of these points, and I therefore restrict myself to observing that the appellant's assertions in this respect are not borne out by his own exhibit, "the grounds of appeal" referred to, or the one entered by Musst. Oomrow, the darogha of Sherghotty's keyfeyut, and to which the appellant so confidently refers. The "grounds of appeal" of 25th February 1840 were taken against a decree obtained by the plaintiff, appellant, *versus* Musst Oomrow, in which he had sued her for the "tarree agar and balkumeyee," or "refuse sweepings of the granaries of the village" for the year 1246 F., valued at rupees 374-4-2-8, for a village the mofussil rental of which does not appear to have exceeded rupees 2000!! This at all events shews, from the character of this extraordinary litigation, that if his two relatives Lutchee and Nundoo Mahtos were afraid of Musst. Oomrow as her ryots, he, in the same condition, was above any thing of the kind, and reckless as to what kind of a suit he instituted against her! In this "grounds of appeal" Musst. Oomrow argues that, as Kalloo Mahto was "only a cultivator under his paternal uncle Poorun's" thika from 1233 F., he could "hold no title to a claim such as that originating in turree agar and balkumeyee." There is no mention made in it as to the duration of Poorun's lease, and nothing from which it could be inferred whether the lease expired in 1245 F., or extended, as claimed by Lutchee and Nundoo Mahtos, to 1249 F. This appeal was decreed in favor of Musst. Oomrow. The darogha of Sherghotty's keyfeyut is a mere miscellaneous report, on which an order was passed, 20th December 1838, referring the parties to the civil court. In this mention is made of Poorun as farmer under a lease from one Shaeykh Beebee, (who is said to have made over the "tarree, agar, and balkumeyee" to Kalloo Mahto in the above appeal case of 1840,) that on Poorun's death in 1245 Lutchee and Nundoo Mahto succeeded as his heirs. That in 1241 Musst. Oomrow obtained possession through the court and at first upheld Poorun's lease, but that from 1246 Musst. Oomrow, asserting that Poorun's lease had expired, made other arrangements. That Lutchee and Nundoo Mahto say they hold another lease from Musst. Oomrow, but which she denied.

The production of a single vakalutnamah bearing Musst. Oomrow's signature without her seal is, under all the circumstances of the case, unimportant. It, at least, purports to be under her signature, which, at all events is not the case with the plaintiff's document.

I am therefore of opinion that this suit is not only a worthless one, but that there are also ample grounds for strong presumption that it has been taken in collusion with plaintiff's relatives, the other two defendants Lutchee and Nundoo Mahtos.

ORDERED,

Appeal dismissed, without issuing notice to the respondent.

THE 29TH APRIL 1848.

No. 1 of 1848.

Appeal from the decision of Moulvee Mahomed Ibrahim Khan, Officiating Principal Sudder Ameen, dated 25th November 1847.

Sheick Illaieebuksh and Peer Alli, and others, (Plaintiffs,
Appellants,

versus

Mungul Sing and others, (Defendants,) Respondents.

CLAIM to recover possession of 13 annas, 6 dams, 10 cowries, proprietary title by succession and purchase in mouza Puroha, pergunnah Behar, valued in the aggregate at rupees 2,420-15-2-11, inclusive of interest and malikana from 1243 to 1253 F. S., and for the registry of their names accordingly.

The estate of Puroha was sold for arrears of revenue on 28th April 1835, and, being purchased by one Beharee Laul, was by him sold to the defendants (respondents.) The plaintiffs (appellants) are its *ci-devant* proprietors, who set up a claim to a portion of its malikana, founded on their having held such a title independent of the permanent settlement, which took effect as a mokurruree.

The officiating principal sudder ameen's decision decrees that the entire title to the estate went with the sale in April 1835. That the decennial engagement taken in the name of Gholam Moheooddeen (the plaintiffs' predecessor) specified their taking it as "maliks." That such litigation as occurred intermediately between the date of its permanent settlement, 1199 F., and the sale for arrears of revenue in 1835, only confirmed this view, viz. decrees of 10th April 1846 and 2d May 1834, as well as the plaintiffs' and Kurramut Alli's applications on the occasion of mutation of names.

The plaintiffs (appellants) aver that the sale purchaser only obtained a portion of the "milkeyut" and "mokurruree" titles by the sale for arrears in 1835, including of the former 2 annas 13 dams 10 cowries under a "buymukasa," or barter in lieu of dower belonging to Musst. Sadreh, which, together with 2 annas 13½ dams mokurruree title was sold in satisfaction of security in the abkarree department, and purchased by one Sheick Ruhmut Alli, on which occasion the mutation of names, as regarded the mokurruree and milkeyut titles was separately and distinctly taken.

JUDGMENT.

The plaintiffs and the predecessors held this estate under the permanent settlement until its sale for arrears of revenue in 1835. There is some confusion in intermediate proceedings originating in litigations between the co-parceners prior to 1835, in which they style themselves maliks and mokurrureedars, and which designations they in like manner succeeded in introducing into the registers on

the occasion of mutation of names, so much so that the collector's sale proceedings of 28th April 1835 specifies that the sale took effect for the milkeyut mokurruree of Sheick Ruhmut Alli and only for the mokurruree of Musst. Sadreh, whereas, from the particulars given in the same sale proceeding itself, the jumma sudder being rupees 907-10-8, and the sale taking effect for arrears amounting to rupees 85-2-6, it is self evident that the sale of the entire estate took place. The deed of sale, dated 19th December 1835, also declares that the purchaser succeeded to the title held by the late proprietors. Now the plaintiffs (appellants) have no better proof of the two titles having been held distinct, than the assumptions of the co-parceners themselves taken from time to time in suits against each other, and a single sale of the right and title of one of the sharers in satisfaction of a security. Such invalid titles disappear at once with the sale for arrears in 1835. With the exception of their own assumptions thus adverted to, not a single proof has been brought forward to shew that the "mokurruree milkeyut" titles in the estate were ever distinct or separate, either prior to or even subsequent to the permanent settlement. Under these circumstances, the whole issue of the question turns on the point as to the character in which the permanent settlement took effect. The officiating principal sudder ameen's decision remarks that the plaintiffs' (appellants') predecessors engaged at the permanent settlement as "maliks." On calling for and examining the original records of that settlement, viz. the durkhast signed by Gholam Shuruf, as malik, dated 6th Jeyth 1199 F., and the register in the Persian character from 1197 to 1202 F., with each page numbered in English and attested, this opinion is fully confirmed. The particulars given in the column of remarks at page 244, No. 20, of the register, shew that the settlement took effect in the usual course with the maliks, there being no mention of a mokurruree title. Thus, the permanent settlement having been made with the plaintiffs' predecessors in the usual manner as "maliks" without any reserve whatever, the sale purchaser for arrears of revenue in 1835 in due course succeeds to the same title as they, the plaintiffs (appellants) and their predecessors derived from one and the same authority, viz. that of the durkhast of the 6th Jeyth 1199 F., under the permanent settlement.

ORDERED,

Appeal dismissed, without issuing notice to the respondents.

PRESENT: W. ST. QUINTIN, ESQ., ADDITIONAL JUDGE.

THE 4TH APRIL 1848.

No. 20 of 1847.

Appeal against a decree passed by Syud Tuffuzzul Hosein, Sudder Ameen of Behar, on the 72th April 1847.

Shah Chumun, Shah Yar Ulee, himself and guardian of Shah Peer Ulee and Shah Sulamut Ulee, minors, (Defendants,) Appellants,

versus

Jumul Ulee, (Plaintiff,) Respondent.

THIS suit was instituted on the 24th December 1845, to recover the sum of rupees 640, due on a pottah, dated 15th October 1833.

The plaint is, that the defendants accepted an advance of rupees 300, and gave a lease of a four and a half anna share of Mukhdoompore Daur, from 1243 to 1253 Fusly, to the plaintiff, in the name of a third party; that in 1244 Fusly, the estate was resumed and afterwards settled in perpetuity with the defendants, when the plaintiff was dispossessed; and this action is brought to recover the money advanced.

The defendants, in reply, plead that the plaintiff has no document drawn out in his own name to support his claim; that this action is barred by the statute of limitations; that the allegation of the lease is false; that 156 rupees were due from the defendants to one Musst. Lalun and a lease of two annas of this estate was granted to her husband (Ehsan Ulee) on an advance; that the debt to Musst. Lalun was realized in this way; that the advance received from Ehsan Ulee was paid and the lease cancelled; that Ehsan Ulee sued the plaintiff on the plea of a sub-lease, which was a pretence to support the claim of the plaintiffs as the farmer of the property.

The petition of the third party supports the allegations of the plaintiff.

The sudder ameen is of opinion that the allegations of the defendants support the claim of the plaintiff; that no date, month, or year of this lease on an advance to Ehsan Ulee is stated by the defendants, nor do they state whether the receipt was recorded on the back of the deed; that the lease to the plaintiff is established by the deed of ticca pesghee and the evidence to it, as also by the representation of the tahseeldar, and by the decree of court, dated 29th January, in

the action of Ehsan Ulee against the plaintiff: a decree is, therefore, passed in favor of the plaintiff.

The defendants, in appeal, urge that this suit was disposed of before their proofs could be produced, and that if they are allowed to produce the stamp pottah of the transaction with Ehsan Ulee, the matter will be fairly cleared up.

JUDGMENT.

I agree with the sudder ameen in his finding in this case for the respondent. It is admitted by the appellants that they were obliged to raise money on a lease of this estate, and there is no proof that Ehsan Ulee was the farmer, but on the contrary there is ample proof to support the allegation of the respondent having been admitted to the farm. I therefore confirm the decree, and dismiss the appeal, with costs, without issuing a notice for the attendance of the respondent.

THE 7TH APRIL 1848.

No. 22 of 1847.

*Appeal against a decree passed by Syud Tuffuzzul Hosein,
Sudder Ameen of Behar, on the 22d April 1847.*

Chooah Singh, (Plaintiff,) Appellant,

versus

Musst. Chourasee Kooner, as the guardian of her grandson,
Surbanund Tewaree, a minor, (Defendant,) Respondent.

THIS suit was instituted on the 27th November 1844, to recover possession in 7 annas of the village of Talbelountee by redemption, the mortgage bond dated 3d January 1831. Suit valued at three times the rent roll, rupees 631-6-4-16.

The plaint sets forth that Baboo Deodharee Singh, father of Jugutdharee Singh, mortgaged this estate to Lungtoo Tewaree, the father of Surbanund Tewaree, for 5,000 rupees, from 1237 up to 1244 Fusly; that the mortgagee during his life time, and, after him, his son, occupied the estate; that the rights and interests of Jugutdharee were subsequently sold in satisfaction of a decree held against him by one Zuman Khan, who bought the property himself, for 115 rupees, and afterwards sold it to the plaintiff for 301 rupees; that the plaintiff is, therefore, empowered to redeem the mortgage; that a balance of rupees 1,484 in account is due from the defendant.

In reply to this, the defendant pleads that Baboo Teluckdharee Singh is the real plaintiff in this suit; that to redeem a mortgage the estate should be valued on the amount of the money advanced; that Deodharee Singh gave another bond for 200 rupees, which he agreed to pay, whenever he should redeem the mortgage; that no interest has been realized by defendant, and that the plaintiff has over valued the mesne profits.

The sudder ameen decides that the usufruct of the village must be ascertained from the evidence of the village accountant, that the evidence of the plaintiff's putwary is not trustworthy, since both parties in this suit produce copies of the evidence of this person in which the usufruct from 1245 up to 1247 Fusly is stated differently, that the evidence of the witnesses produced by the defendant and the agreements of tenants support the allegations of the defendant, and shew that a balance of rupees 5,104-15-1-12 is due from the plaintiff to the defendant; a decree is, therefore, passed, allowing the plaintiff to pay up this sum within two months and redeem the estate.

In appeal against this decree, the plaintiff urges that his account is made out, and that the sudder ameen has exceeded his powers in awarding the sum he has done.

JUDGMENT.

As the sudder ameen has not the power to pass a decree to the amount he has done, I reverse this decree, and return the case in order that the lower court may take the usual steps for the suit to be heard before a qualified tribunal: an order for a refund of stamp value will also issue.

THE 8TH APRIL 1848.

No. 12 of 1847.

Appeal against a decree passed by Syud Tuffuzzul Hosein, Sudder Ameen of Behar, on the 25th February 1847.

Leela Singh, Oomfao Singh, Junnuck Singh, and Musst. Phool
Kooner, wife of Debee Singh, deceased, (Defendants,)
Appellants,

versus

Sheik Abdool Luteef, (Plaintiff,) Respondent.

THIS suit was instituted on the 6th March 1846, to recover the sum of rupees 493-7-3-12, principal and interest of money, advanced on a deed of lease, dated 13th Jeyt 1241 F.

The plaintiff sets forth that the plaintiff and one Chintamun Roy jointly advanced the sum of 600 rupees to the defendants, and accepted from them a six years' lease of an eight annas' share in the villages of Nadree, Shadeepoor, and Gugnadeeh, at an annual jumma of 801 Sicca rupees—that possession was only given in six annas of the two first-named villages—that an action was brought by the plaintiffs to recover damages for the non-possession of the third village, which was eventually amicably settled between the parties—that the defendants, in fear of a balance appearing against them, would not settle accounts—that one Beharee Lal received rent in excess of his own and the defendants' share, yet on the face of this, the defendants, on the plea of default, brought an action to cancel the plaintiff's lease in which they deducted 386-2-6 as the portion of the advance realized from the rents, and deposited the balance of 114 rupees—that their claim to cancel the lease was rejected and the money deposited was paid back to them, and this action is brought to recover the money advanced.

The defendants, in reply, admit the farming engagement, and plead that the money advanced was realized by the plaintiff with the exception of 114 rupees, which they are now ready to make good—that the farm having been taken jointly by the farmers, the suit of the plaintiff, single-handed, is not cognizable.

The sudder ameen decides that, although it is not specified in the pottah how much of this advance was paid by each of the farmers, yet the sooloonameh, which compromised the suit for damages, shews that it was paid in equal portions—that the defendants are only attempting to avoid payment of the advance—that it is in their power to realize any money due to them by a suit in court, but the advance must be made good without deduction; a decree is, therefore, passed in favour of the plaintiff.

The defendants, in appeal, plead that the sudder ameen's decree is vitiated by the fact of his not having recorded a proceeding in conformity with Sections 11 and 12, Regulation XXVI. of 1814, that there is no provision in the pottah to prevent the proprietors for settling arrears of rent against the money due on the advance.

The respondent petitions, stating that a suit to settle the accounts between the parties is now pending before the sudder ameen's court.

JUDGMENT.

There can be no doubt that the claim for the money advanced is good and valid, and the respondent is entitled to a decree for the amount paid by him; and as a suit is now pending to settle the account for rents between the parties, there can be no occasion to disturb this decision; the decree is, therefore, upheld, and the appeal dismissed, without summoning the respondent.

THE 8TH APRIL 1848.

No. 21 of 1847.

Appeal against a decree passed by Syud Tuffuzzul Hosein, Sudder Ameen of Behar, on the 19th April 1847.

Roopchund and Petumber Singh, (Defendants,) Appellants,

versus

Syud Hedaet Hossein, Musst. Noorun, and Alfun, (Plaintiffs,) Respondents.

THIS suit was instituted on the 9th September 1844, to set aside a proceeding of the magistrate, dated 14th December 1843, confirmed by the session judge on the 6th January 1844, and to obtain possession in a reservoir called "Hettee Soorujnee," appertaining to the village of Munowarpoor Dwedha, and to recover damages for the destruction of 64 beegahs of cultivation, valued at rupees 407-3-2-8.

The plaint is, that this reservoir is situated between the estates of the plaintiffs and the defendants, and that it has from time immemorial been part and parcel of the plaintiffs' village of Munowarpoor, that the defendants used up the water of the reservoir in question and got up a false case under Act IV. against one Nurain and others for the water of the reservoir, which was ruled to them by the magistrate, whose decree was upheld in appeal before the court of sessions.

The defendants, in reply, declare the reservoir to belong to their recently resumed and settled village of Kassim Chuk, that the survey map shows that the water which collects in this reservoir flows from the defendants' village, that the plaintiffs admit that they have no land at the back of the bank of the reservoir, that if the water did belong to the plaintiffs, why should they have denied cutting the bandh in the Act IV. case? that in the map defining the boundaries, the embankment of this reservoir, with the trees on it, is included in the village of Kassim Chuk.

The sudder ameen decides that, in the Act IV. case, the defendants declared that this reservoir and the land under it appertained to Kassim Chuk, whereas in this instance they state that only the bank of the reservoir and the water belong to them, that, on inspection by the court, it appeared that the disputed spot could not bear out the representation of the defendants, that the deputy collector has represented the reservoirs of Kassim Chuk to be very small and that the village is watered by the rain from the sky, that the survey map confers no right, that this appears to be a new dispute, raised since Regulation VII. of 1822, was applied to the village, that since the usufruct claimed by the plaintiff is excessive, a decree is passed, giving the plaintiff possession, with usufruct valued at 2 rupees per beegah.

In appeal, the defendants urge no new pleas and merely repeat their former reply.

JUDGMENT.

I quite agree with the sudder ameen in his finding in this case, and will only add to his just reasoning the great improbability that if the lands of Kassim Chuk had a right of water in this reservoir, well known under the name of Hettee Soorujnee, so important a fact should not have been recorded in the settlement proceedings of Kassim Chuk. I uphold the decree, and dismiss the appeal with costs, without causing the attendance of the respondent.

THE 14TH APRIL 1848.

No. 24 of 1847.

Appeal against a decree passed by Syud Tuffuzzul Hosein, Sudder Ameen of Behar, on the 26th April 1846.

Purbhooodeobhut and Rughoobeer Singh, (Defendants,) Appellants,
in the suit, Debee Singh, (Plaintiff,) Respondent,

versus

Purbhooodeobhut, Rughoobeer Singh, Shunker Patuk, Nurain Dut Patuk, Rutun Patuk, Rujjoo Patuk, Laldeep Patuk, Telukdharee Patuk, Musst. Anur Kooner, Jewlal Patuk, Mewa Patuk, Puryagdut Patuk, Musst. Chumpa Kooner, Choonny Patuk, Beelas Patuk, Belassmun Patuk, and Heera Patuk, Defendants.

THIS suit was instituted on the 8th April 1845, to recover the sum of rupees 798, 5 annas, the value of rice produced from a 15 annas' share in the village of Rampoor, in 1252 Fusly, and to amend a decision under Act IV., dated 3d January 1845.

The plaint sets forth that the plaintiff advanced 1,085 rupees to the defendants, the proprietors of Rampoor, and accepted a lease from them of this share from 1246 up to 1251, under an agreement that the farm should be continued to the plaintiff in the event of the defendants not paying up the advance on expiry of the lease, that, when the estate was resumed and came under settlement, the proprietors were admitted to the settlement, but the revenue authorities confirmed the lease of the plaintiff and ordered that, until the money advanced should be paid, the farm should be continued to him, that after this, and on the expiry of the first lease, the proprietors renewed the lease of ten annas, for six years, on a second deed, and the circumstance was reported to the deputy collector and to the superintendent of khas mehals, that in the face of this, and without making good the money advanced, the proprietors, in collusion with the other two defendants, forcibly carried away the rice crops of 1252 Fusly, that the plaintiffs brought an action under Act IV.

against the defendants to recover 1,600 maunds of rice, when the magistrate confirmed the occupation of the plaintiff, but ordered only 164 maunds of rice to be made good, referring the defendants, Purbhoodeobhut and Rughoobeer Singh (who styled themselves to be the rightful farmers of Rampoor,) to a regular suit against the proprietors, that since the spoliation of the crops and the occupancy of the plaintiff were established, this action is brought to recover the balance of the rice carried off.

Purbhoodeobhut and Rughoobeer Singh (defendants,) in reply, plead that the village was certainly leased to the plaintiff, who defaulted in 1250 Fusly, when the proprietors borrowed the amount of the advance from the defendants and leased the estate to them, that the plaintiff refused to accept the money and the proprietors gave notice of this refusal to the court, as well as at the khas mehal office, and deposited the money in a bank where it now is, that this suit, for the produce of 1252, is not cognizable, and that the defendants occupied the farm during that year.

The defendants, Heeramun Patuk, Beelas Patuk, Jewlal Patuk, and Telukdharee Patuk, in reply, support the representation of Purbhoodeobhut and Rughoobeer Singh.

The sudder ameen decides that the farm to the plaintiff is clearly proved, and that the magistrate only awarded 164 maunds of rice, that the amount of produce is not correctly stated by the plaintiff, since it is not likely that the produce per beegah was the same all around: amending the claim of the plaintiff, a decree is therefore passed for 201 rupees, 11 annas.

Against this decree the defendants claiming the farm, institute an appeal, in which no new points are raised.

JUDGMENT.

The proprietors of this estate are virtually dispossessed by the first farmer's (Debee Singh) non-acceptance of the balance of the advance, and they had no power to grant a lease to the appellants until they had ousted the first farmer: the appellants' claim of occupancy in the farm is sufficient to warrant the sudder ameen in passing this decree in favor of the respondents. I therefore confirm the decree, and dismiss the appeal, without summoning the respondents.

THE 14TH APRIL 1848.

No. 25 of 1847.

Appeal against a decree passed by Syud Tuffuzzul Hosein, Sudder Ameen of Behar, on the 26th April 1847.

THIS suit is an appeal on the part of the plaintiffs, Purbhoodeobhut and Rughoobeer Singh, *versus* Jeolal Patuk, Telukdharee Patuk, Musst. Anur Kooner, wife of Koonja Patuk, the proprietors,

and Debee Singh, the farmer of Rampoor. The suit was instituted on the 16th February 1845, to obtain possession in 4 annas of Rampoor, according to a pottah, dated 19th December 1842, and to set aside the order under Act IV. noticed in the preceding suit; value computed at rupees 143-14-6. The plaintiffs give the same pleas in prosecution of this case, as they did in defending the preceding, and they are supported by the defendants, the proprietors; Debee Singh, the farmer, pleading as in the former suit.

The sudder ameen decides that, since the farm to Debee Singh was confirmed by the settlement officer, no new lease can be given till the money advanced is made good and the proprietors get possession through the court: the case is, therefore, dismissed. In appeal the plaintiffs urge that the proprietors are in possession, as they have received the rents from them and confirmed the lease.

JUDGMENT.

For the reasons stated in the judgment in the preceding case, I confirm this decree, and dismiss the appeal, without summoning the respondents.

THE 14TH APRIL 1848.

No. 26 of 1847.

Appeal against a decree passed by Syud Tuffuzzul Hosein, Sudder Ameen of Behar, on the 26th April 1847.

THIS suit is an appeal on the part of the plaintiffs, Purbhooodeobhut and Rughoobeer Singh, *versus* Shunker Patuk, Laldeen Patuk, Nuraindut Patuk, Surbun Patuk and Soorjoo Patuk, the proprietors, and Debee Singh, the farmer of Rampoor. The suit was instituted on the 18th February 1845, to obtain possession in 4 annas of Rampoor, according to a pottah, dated 19th December 1842, and to set aside the order under Act IV. noticed in the preceding suit, value computed at rupees 143-14-6. The plaintiffs give the same pleas in prosecution of this case, as they did in defending the preceding, and they are supported by the defendants, the proprietors; Dabee Singh, the farmer, pleading as in the former suit.

The sudder ameen decides that, since the farm to Dabee Singh was confirmed by the settlement officer, no new lease can be given till the money advanced is made good and the proprietors get possession through the court: the case is, therefore, dismissed. In appeal the plaintiffs urge that the proprietors are in possession, as they have received the rents from them and confirmed the lease.

JUDGMENT.

For the reasons stated in the judgment in the case No. 24, I confirm this decree, and dismiss the appeal, without summoning the respondents.

THE 14TH APRIL 1848.

No. 27 of 1847.

Appeal against a decree passed by Syud Tuffuzzul Hosein, Sudder Ameen of Behar, on the 26th April 1847.

THIS suit is an appeal on the part of the plaintiffs, Purbhoo-deobhut and Rughoobeer Singh, *versus* Choonney Patuk, Mohun Patuk, Boodhoo Patuk, and Bhookun Patuk, proprietors, and Debee Singh, the farmer of Rampoor. The suit was instituted on the 8th March 1845, to obtain possession of 1 anna share of Rampoor, according to a pottah, dated 29th January 1843, and to set aside the order under Act IV. noticed in the preceding suit, value computed at rupees 36-13-7-10. The plaintiffs give the same pleas in prosecution of this case as they did in defending the preceding, and they are supported by the defendants, the proprietors; Debee Singh, the farmer, pleading as in the former suit.

The sudder ameen decides that, since the farm to Debee Singh was confirmed by the settlement officer, no new lease can be given till the money advanced is made good and the proprietors get possession through the court; the case is, therefore, dismissed. In appeal the plaintiffs urge that the proprietors are in possession, as they received the rents from them and confirmed the lease.

JUDGMENT.

For the reasons stated in the judgment in the case No. 24, I confirm this decree, and dismiss the appeal, without summoning the respondents.

THE 14TH APRIL 1848.

No. 28 of 1847.

Appeal against a decree passed by Syud Tuffuzzul Hosein, Sudder Ameen of Behar, on the 26th April 1847.

THIS suit is an appeal on the part of the plaintiffs, Purbhoo-deobhut and Rughoobeer Singh, *versus* Heera Singh, proprietor, and Debee Singh, the farmer of Rampoor. The suit was instituted on the 8th March 1845, to obtain possession of 1 anna share of Rampoor, according to a pottah dated 28th Poos 1250 Fusly, and to set aside the order under Act IV. noticed in the preceding suit, value computed at rupees 39-7-7-10. The plaintiffs give the same pleas in prosecution of this case, as they did in defending the preceding, and they are supported by the defendants the proprietors; Debee Singh, the farmer, pleading as in the former suit.

The sudder ameen decides that, since the farm to Debee Singh was confirmed by the settlement officer, no new lease can be given till the money advanced is made good and the proprietors get posses-

sion through the court; the case is, therefore, dismissed. In appeal the plaintiffs urge that the proprietors are in possession, as they have received the rents from them and confirmed the lease.

JUDGMENT.

For the reasons stated in the judgment in the case No. 24, I confirm the decree, and dismiss the appeal, without summoning the respondents.

THE 14TH APRIL 1848.

No. 29 of 1847.

Appeal against a decree passed by Syud Tuffuzzul Hosein, Sudder Ameen of Behar, on the 26th April 1847.

THIS suit is an appeal on the part of the plaintiffs, Purbhoodeobhut and Rughoobeer Singh, *versus* Beelassmun Patuk, proprietor, and Debee Singh, the farmer of Rampoor. The suit was instituted on the 8th March 1845, to obtain possession in 4 annas share of Rampoor, according to a pottah, dated 30th Chyete 1250 Fusly, and to set aside the order under Act IV. noticed in the preceding suit, value computed at rupees 154-14-6. The plaintiffs give the same pleas in prosecution of this case as they did in defending the preceding, and they are supported by the defendants, the proprietors; Debee Singh, the farmer, pleading as in the former suit.

The sudder ameen decides that, since the farm to Debee Singh was confirmed by the settlement officer, no new lease can be given till the money advanced is made good and the proprietors get possession through the court: the case is, therefore, dismissed. In appeal the plaintiffs urge that the proprietors are in possession, as they have received the rents from them and confirmed the lease.

JUDGMENT.

For the reasons stated in the judgment in the case No. 24, I confirm this decree, and dismiss the appeal, without summoning the respondents.

THE 14TH APRIL, 1848.

No. 30 of 1847.

Appeal against a decree passed by Syud Tuffuzzul Hosein, Sudder Ameen of Behar, on the 26th April 1847.

THIS suit is an appeal on the part of the plaintiffs, Purbhoodeobhut and Rughoobeer Singh, *versus* Heera Patuk, proprietor, and Debee Singh, the farmer of Rampoor. The suit was instituted on the 8th March 1845, to obtain possession of 1 anna share of Rampoor, according to a pottah dated 29th January 1843, and to set aside the order under Act IV. noticed in the preceding suit, value

computed at rupees 43-3-7-10. The plaintiffs give the same pleas in prosecution of this case as they did in defending the preceding, and they are supported by the defendants, the proprietors; Debee Singh, the farmer, pleading as in the former suit.

The sudder ameen decides that, since the farm to Debee Singh was confirmed by the settlement officer, no new lease can be given till the money advanced is made good and the proprietors get possession through the court; the case is, therefore, dismissed. In appeal the plaintiffs urge that the proprietors are in possession, as they have received the rents from them and confirmed the lease.

JUDGMENT.

For the reasons stated in the judgment in the case No. 24, I confirm this decree, and dismiss the appeal, without summoning the respondents.

THE 14TH APRIL 1848.

No. 33 of 1847.

Appeal against a decree passed by Syud Tuffuzzul Hosein, Sudder Ameen of Behar, on the 17th May 1847.

Teeka Singh, Bhopal Singh, Himut Singh, and Doondee Singh, (Defendants,) Appellants, in the suit of Motee Singh, (Plaintiff,) Respondent,

versus

Teeka Singh, Bhopal Singh, Chutoree Singh, Amr Singh, Debee Singh, Doondee Singh, Gundown Singh, Mungul Singh, Fuqeera Rae, Pokhun Singh, Deogun Rae, Jhundoo Rae, Girwar Rae, and Byjoo Rae, Defendants.

THIS suit was instituted on the 17th August 1846, to recover the sum of rupees 350, 10 annas, 6 pie, the value of a share in 4,000 maunds of grain, the produce of the farm of the village of Mahomed Aameepoor Muee, for 1252 Fusly.

The plaint sets forth that the plaintiff advanced 500 rupees to the defendant, Teeka Singh, and accepted a lease of his two annas' share in this village from 1252 up to 1258 Fusly, at an annual jumma of rupees 108-12, on a deed sealed by the cazee and dated 28th Bhadoo 1251 Fusly; that when the produce of the spring and autumnal harvest of 1252 was stored in the homestead, Teeka Singh and the other defendants forcibly took possession and appropriated the whole of it; that in an Act IV. case arising from this occurrence, the plaintiff's right to occupancy of the farm was recognized.

Teeka Singh, (defendant,) in his reply, admits the lease to the plaintiff, but denies the appropriation of the produce.

Bhopal Singh, Himut Singh, and Doondee Singh, (defendants,) in their reply, plead that the plaintiffs represented to the police that

2,000 maunds of grain was taken away, and he now claims a share in 4,000 maunds; that plaintiff calls Teeka Singh the real defendant, so that they are not concerned; that if the allegation of the plaintiff be true, why do the cultivators refrain from complaint? that the fact is, that plaintiff and Geenah Singh his father, on the plea of having purchased the four annas' share of Gondowree Singh in this village, appropriated 2,000 maunds of the produce, and anticipated the defendants' action by the institution of this suit.

The other defendants allow the suit to go by default.

The sudder ameen decides that, in the proceedings of the criminal authorities, the plaintiff's claim is clearly proved, and it is supported by the retaliation of the defendants, but since the valuation on the part of the plaintiff is excessive, a decree is passed for 325 rupees against the defendants pleading to the suit.

In appeal, the defendants repeat the pleas urged by them in the first instance.

JUDGMENT.

I see no reason to disturb this decree, and agree with the sudder ameen in his reasons for the decree he has passed: it is therefore confirmed, and the appeal dismissed, with costs, without issuing a notice for the attendance of the respondents.

THE 19TH APRIL 1848.

No. 4 of 1847.

Appeal against a decree passed by Sheikh Kassim Allee, the Additional Moonsiff of Gyah, on the 24th November 1846.

• Cheet Lal, and on his death, Bode Purkash, his heir, (Plaintiff)
Appellant,

versus

Ahmud Allee Khan, Sheikh Joomye, Kurreemdad Khan, Kureem Ally Khan, Lala Sohun Lal, and Aboo Khan, (Defendants,) Respondents.

THIS suit was instituted on the 9th May 1845, to recover the sum of rupees 83-2, the value of a pair of silver sticks.

The plaint is, that the plaintiff borrowed two pair of silver sticks to give effect to a festive procession, which were entrusted to the four first named defendants, on the security of the two last; that one pair of the sticks were returned and the other pair lost, and this action is brought to recover the value of them, but the matter was brought to the notice of the magistrate, who referred the plaintiff to the civil court for redress.

All the defendants, with the exception of Sohun Lal, deny participation in the transaction. Sohun Lal pleads that, on the application of the plaintiff, he supplied these chobdars, and that the plain-

tiff made his own arrangements with them, and that he was no security for their good conduct.

The moonsiff rejects the plaintiff's claim as his witnesses give discrepant evidence, and are not able to recognize the defendants, and because it is not likely that, if these silver sticks were missing, the plaintiff would have paid the defendants for their services rendered in the procession.

The plaintiff urges, in appeal, that the reply of Sohun Lal establishes the fact of the other defendants having been employed in the procession; that the moonsiff ought to have recorded the discrepancy in the evidence of the witnesses; and that it was on the agreement that they should return the silver sticks, that the payment for service was made to the defendants.

JUDGMENT.

I agree with the moonsiff in his finding in this case. The appellant has no proof to support his claim; and from having paid these choddars for their services, he has afforded strong presumptive evidence that he had no claim against them. I therefore uphold the decree, and dismiss the appeal, with costs, without issuing notice on the respondents.

THE 19TH APRIL 1848.

No. 5 of 1847.

Appeal against a decree passed by Sheikh Kasim Allee, the Additional Moonsiff of Gyah, on the 24th November 1846.

Moondree Lal, (Defendant), Appellant, in the suit of Oochhit Sahoo, (Plaintiff,) Respondent,

versus

Moondree Lal and Munnoo Lal, Defendants.

THIS suit was instituted on the 16th June 1846, to recover the sum of rupees 38, 5 annas, being the amount principal and interest due on a kistbundee, dated 24th April 1843.

The plaint sets forth that the plaintiff took out execution of a decree against the defendant, Munnoo Lal, who executed this deed with the other defendant, Moondree Lal, as his surety; that the agreement was to pay 2 rupees per mensem, and in the event of default the plaintiff was empowered to realize the whole amount with interest; that default did occur, hence this action; that the deed and security bond were presented to the moonsiff's court for his signature, when the kistbundee was signed and the security bond returned.

Munnoo Lal, defendant, in reply, pleads that this suit is got up for the purpose of increasing expences, since execution might have been taken out on the kistbundee.

Moondree Lal, defendant, in his reply, pleads that as this is a second action on the same cause, it will not lie, that the security bond was rejected by the court and returned to him, that it was made over to one Monee Ram, as useless, who has made it over to the plaintiff.

The moonsiff gives the plaintiff a decree against both the defendants, as the claim is proved by evidence, and Munnoo Lal admits the kistbundee, and Moondree Lal admits the writing of the surety bond, which is held by and presented to the court by the plaintiff.

The defendant, Moondree Lal, appeals on the pleas urged in his first reply.

JUDGMENT.

The kistbundee was entered into in satisfaction of a decree and can be enforced without another action. The moonsiff takes no notice of this point, nor does he explain in his decree in what way this action is cognizable. I therefore reverse the decree, and return the case for a review of judgment with reference to the above remarks, and pass the usual order for a refund of the stamp value.

THE 20TH APRIL 1848.

No. 238 of 1846.

Appeal against a decree passed by Sheikh Kasim Allee, Additional Moonsiff of Gyah, on the 10th November 1846.

Chuttoor Sahoo, (Plaintiff,) Appellant,

versus

Jhungee Sahoo and Bhekaree Nooneear, (Defendants,) Respondents.

THIS suit was instituted on the 8th March 1845, to set aside the sale of a house, by reversing a miscellaneous order of the additional moonsiff of Gyah, dated 3d February 1845. Suit valued at rupees 35, the sale price.

The plaint sets forth that one Runglal Patuk sold this house to the plaintiff under a deed of sale dated 15th June 1839: that Bhekaree, defendant, rented the house of the plaintiff: that Jhungee Sahoo entered the house in the schedule of the property of Bhekaree, and it was sold in execution and bought by Jhungee: that objections to the sale were urged by the plaintiff and rejected by the moonsiff: that a sale cannot be set aside by a miscellaneous order, and this action is brought to contest the point.

The defendant, Jhungee Sahoo, in his reply, pleads that the plaintiff and Bhekaree are first cousins, and this sale is a pretence to prevent the execution of this decree against Bhekaree: that the occupancy of Bhekaree is proved on the plaintiff's own shewing: that the deed of sale is neither registered, nor sealed by the casee.

The moonsiff decides that the deed of sale produced by the plaintiff was upon an inefficient stamp, when it was first entered with his petition objecting to the sale of the house in satisfaction of the decree against Bhekaree, that it is neither registered, nor sealed by the cazee, it is therefore not valid, and the suit is dismissed.

Against this decree the plaintiff, in appeal, pleads that his case is made out, and that Bhekaree is a tenant and not a proprietor of the house in question.

JUDGMENT.

Besides the just reasons recorded by the moonsiff for dismissing this claim, an inspection of the deed of sale is quite enough to shew that this is a false deed of sale, got up to prevent the execution of the decree of Jhunggee Sahoo against Bhekaree. I therefore uphold the decree, and dismiss the appeal, with costs, without issuing any notice on respondents.

THE 20TH APRIL 1848.

No. 8 of 1847.

Appeal against a decree passed by Sheikh Kasim Allec, Additional Moonsiff of Gyah, on the 17th November 1846.

Bolakee Lal, (Defendant,) Appellant,

versus

Mewah Lal, (Plaintiff,) Respondent.

THIS suit was instituted on the 8th April 1846, to recover the sum of rupees 51-6-7, being the balance of principal and interest due on an account current.

The plaint is, that these parties had mercantile transactions between them, and on a settlement of account up to Sumbut 1902, a balance was shewn in favor of the plaintiff, which the defendant refuses to pay.

The defendant, in reply, admits the mercantile transactions with the plaintiff, and pleads in objection to the claim that the plaintiff's partner, one Buldeo Lal, ought to have been a party to the suit : that interest is levied on sales of cloth : that a balance of 27-12-7 was due to the plaintiff, 20 rupees, 1 anna, of which has been paid, and that a maun of ghee was made over to plaintiff which has not been accounted for.

The moonsiff decides that the defendant admits these dealings with the plaintiff and objects to the interest demanded : that the evidence of the witnesses on both sides proves that it is customary to levy interest on sales of cloth : that payment was demanded and promised : a decree is, therefore, passed in favor of the plaintiff.

In appeal, the defendant repeats the former defence and calls for a show up of the banking books.

JUDGMENT.

The appellant admits that there is a balance against him in account, and his own witnesses declare that it is customary to levy interest on money due for the purchase of cloths. I therefore uphold this decree, and dismiss the appeal, with costs, without causing the attendance of the respondent.

THE 25TH APRIL 1848.

No. 261 of 1846.

Appeal against a decree passed by Moulavee Fureedooddeen, Moonsiff of Aurungabad, on the 20th November 1846.

Akhowree Gopal Lal, son and heir of Akhowree Roopnarain Ram, (deceased,) and Akhowree Jhubun Ram, (Defendants,) Appellants,

versus

Akhowree Mukhun Ram, himself and as guardian to Heera Lal, sons and heirs of Akhowree Sangum Ram, (Plaintiffs,) Respondents.

THIS suit was instituted on the 20th May 1845, to obtain possession on a $\frac{1}{2}$ annas share of the village of Pran Chuck, and a fourth share in two shares of Sondhee under a deed of mortgage, dated 29th Kartick 1247 Fusly, and to recover the sum of rupees 40 as mesne profits accruing for 1252 Fusly. Suit valued at rupees 142-1-3-19.

The plaint sets forth that Akhowree Roopnarain and Akhowree Jeetun Ram mortgaged this estate to the plaintiff's father Akhowree Sangum Ram, that the mortgage was foreclosed according to law, and this action is brought to obtain possession accordingly.

The defendants, in reply, admit the mortgage, and plead that they were not served with the usual notice of foreclosure: that as the whole of the mortgage money has never been paid, the mortgage is void: that 100 rupees cash was paid, and a teep for the other hundred has never been realized: that the agreement was that when the cash on the teep was realized the mortgage deed should be registered and sealed by the cazee.

The moonsiff decides in favor of the plaintiff, since the mortgage deed was duly made over to him, and it is clearly proved that notice of foreclosure was served on the defendants, and rules that it is optional with the defendants to make the money due on the teep the subject of a fresh suit.

The defendants appeal on the pleas that the whole of the mortgage money was not paid up, and that until cash is realized from the teep the mortgage is incomplete.

JUDGMENT.

I consider this mortgage to be complete, the deed was made over to the respondent, and when the mortgage was foreclosed no objec-

tions were urged by the appellants on the score of the teep, although it is in record that the usual notice of foreclosure was served on the appellants, I therefore agree with the moonsiff in giving the respondent possession, uphold the decree, and dismiss the appeal, with costs, without issuing notice for the attendance of the respondent.

THE 25TH APRIL 1848.

No. 2 of 1847.

Appeal against a decreepassed by Moulavee Tufuzul Hosein, Moonsiff of Jehanabad, on the 24th November 1846.

Syud Ameer Allee, Synath Singh, Sewsuhac Singh, Bhow'un Singh, and Munnoo Lal, (Defendants,) Appellants,

versus

Doorbejeey Ram, (Plaintiff,) Respondent.

THIS suit was instituted on the 7th July, 1845, to set aside an illegal attachment, and to recover the sum of rupees 15 paid into the office of the commissioner for distraints.

The plaint is, that the defendants took out an attachment against the plaintiff to recover an alleged arrear of rent for two houses in the village of Oobrah, that the custom prevailing in this village is, that the zenana apartments only should be assessed, and that the shops attached to them are held by the plaintiff and his brother at a fixed rent of 8 tacca, which has always been paid, and that the high rate of rent now demanded is not usual in that part of the country.

The defendants, in reply, plead that the customary rent was demanded and payment refused, an attachment followed, and this suit is an attempt on the part of all the merchants of the village to evade shop rent.

The moonsiff sets aside the attachment, and gives the plaintiff a decree, because the luggit on which the attachment was made, does not agree with the account now rendered by the defendants, nor is it signed by either of the two village accountants, but by a third party, styling himself the naib putwary, who is not named as a witness in the case.

In appeal, the defendants plead that the suit was decided before the evidence of the witnesses on either side was taken.

JUDGMENT.

Without doubt the validity of the luggit on which this attachment was taken out is the corner stone of this suit; and since that is in all respects informal, the moonsiff has done quite right to set aside the attachment: no amount of oral evidence can in any way affect the merits of the case. I therefore uphold the decree, and dismiss the appeal, with costs, without calling upon the respondent to attend.

THE 27TH APRIL 1848.

No. 239 of 1847.

Appeal against a decree passed by Moulavee Fureedooddeen, Moonsiff of Aurungabad, dated 9th November 1846.

Jutadharee Miser and Kullahdharee Miser, (Defendants),
Appellants,

versus

Sheobukhsh Miser, (Plaintiff), Respondent.

THIS suit was instituted on the 5th October 1844, to recover the sum of rupees 296, 15 annas, 4 pie, 10 krant, being the amount principal and interest of revenue paid in excess according to 8 collectory dakhilas.

The plaint sets forth that the village of Sunrah Bilourah is held in equal shares between the plaintiff and the defendants: that the Government revenue is fixed at rupees 212-15-3: that the defendants defaulted, and the plaintiff to protect the estate from sale pays in the whole of the revenue: that the amount now claimed was due on the defendant's share and has been paid by the plaintiff.

The defendants, in reply, plead that from 1246 up to 1250 Fusly, a balance of revenue amounting to rupees 889-2-3 was due from them: that rupees 273-2 of this was paid through one Rumah and 67 by the plaintiff: that in 1248 the plaintiff held the defendants' share of the estate in farm, paid 350 rupees as the revenue of that year: that at the time of settlement the defendants paid 200 rupees, which was transferred to the revenue account, thus rupees 890-2 was paid into the collectory on account of the defendants' share: and that nothing can be due to the plaintiff on the score of revenue payments in excess.

The moonsiff, after enquiries from the vakeels of both parties, decides that the plaintiff's claim is just: that the objections urged by the defendants of the farm and the transfer are not cognizable in this suit, and that the defendants produce no proof of the 67 rupees having, as they allege, been paid on their account by the plaintiff: a decree is therefore passed in favor of the plaintiff.

The defendants in appeal raise no new points.

This suit was nonsuited by a former moonsiff on the plea that the claims involved amounted to more than he could adjudicate. The judge overruled the moonsiff's decision, and, in a miscellaneous proceeding dated 23d July 1846, directed a re-trial, and that the suit should be decided on its merits.

JUDGMENT.

I see no reason to disturb this decree. It is proved that the respondent paid the Government revenue due on the share of the appellants, and they have nothing to shew that they have remune-

rated the respondent. I agree with the moonsiff that the alleged transfer of 200 rupees and the farm transaction are not cognizable in this suit, since there was no agreement between the parties that these transactions should be set-offs in the revenue account. I therefore uphold the decree, and dismiss the appeal, with costs, without issuing a notice for the attendance of the respondent.

THE 27TH APRIL 1848.

No. 240 of 1846.

Appeal against a decree passed by Moulavee Fureedooddeen, Moonsiff of Aurungabad, on the 9th November 1846.

Jutadharee Miser and Kullahdharee Miser, (Defendants,) Appellants,

versus

Shewbuksh Miser, (Plaintiff,) Respondent.

THIS suit is the same as the preceding instituted to recover the amount principal and interest of revenue paid in excess for mouzah Muhesra, amounting to rupees 198-12-5. The defendants' reply is the same, and the moonsiff gives a similar judgment. The defendants appeal on the grounds set forth in the preceding case.

JUDGMENT.

For the reasons stated in the preceding case, I uphold the decree, and dismiss the appeal, without issuing a notice for the attendance of the respondent.

THE 28TH APRIL 1848.

No. 16 of 1846.

Appeal against a decree passed by Sheikh Aassim Allee, Additional Moonsiff of Gyah, on the 17th November 1846.

Bikramajeet Singh, agent of Jugmohun Bhuyah Gyawal, (Defendant,) Appellant,

versus

Musst. Rumah, (Plaintiff,) Respondent.

THIS suit was instituted on the 23d November 1844, to recover the sum of rupees 242-2, due on a deed of jueebundee, dated 2d Ughun 1891 Sumbut.

The plaint sets forth that the defendant, Jugmohun Bhuyah, covenanted in this deed to collect the money due on 54 orders on Bengalee pilgrims aggregating 277-13, half of which on realization was to be paid to the plaintiff, and to collect 119 Sicca rupees due on two bonds, one quarter of which on realization was to be paid to the plaintiff; and it was also agreed that, whatever collections should

be made from any pilgrims Jugmohun might bring back with him from Bengal, should be divided between them; that ten years have elapsed since this agreement; that the money has been subsequently collected, and not a fraction paid to the plaintiff: hence this action.

The defendant, Bikramajeet Singh, in reply, pleads that the principal defendant, Jugmohun, does not reside in this district, and that the case cannot be disposed of till notice is served on him to plead to the claim, that although he is sole and full agent to Jugmohun, yet he is only partially acquainted with the nature of this transaction, that as far as he knows 5 peons were appointed to make these collections at a monthly salary of 2 rupees each, that, as they failed in effecting their object, notice was given to the plaintiff who was called upon to take back the orders and settle accounts for the payments made to the peons, that this jueebundee was not entered into by Jugmohun.

The moonsiff decides that the defendants deny the validity of the deed of agreement, that the appointment of the peons to make these collections is only a declaration, that the evidence of the plaintiff's witnesses fully establishes the claim: a decree with costs is therefore passed in favor of the plaintiff.

The defendant appeals, on the pleas that he has never effected these collections, which is proved by his still holding the orders, and that he never entered into this agreement with the plaintiff, and that the plaintiff's witnesses are all followers and dependants, and that he was not allowed to prove that these collections were not made.

JUDGMENT.

The moonsiff's investigation is incomplete in this case, and he must give the appellant an opportunity to prove that he never made any of these collections. It is not sufficient that the respondent should prove the validity of this agreement: the point of collection or non-collection must be considered and disposed of. I therefore reverse this decree, and direct a re-investigation with reference to the above remarks, and pass the usual order for a refund of the stamp value to the appellant.

THE 28TH APRIL 1848.

No. 20 of 1846.

Appeal against a decree passed by Moulavee Furcedoodeen, Moonsiff of Aurungabad, on the 7th December 1845.

Bhoop Singh, (Appellant,) Plaintiff,

versus

Pooneet Singh, (Respondent,) Defendant.

THIS suit was instituted on the 9th December 1844, to obtain possession in an eight annas' share of the village of Mejhur, pergunnah Shuhurghotty, valued at rupees 13-9-7-4.

The plaint sets forth that the defendant mortgaged his estate to the plaintiff for a loan of 75 rupees on a deed dated 15th June 1826, that the mortgage was foreclosed on the 21st April 1835, and this action is for possession.

The defendant, in reply, pleads that he has no knowledge whatever of this transaction, that the deed is dated more than twelve years ago, and the suit not cognizable.

The case was decided in favor of the plaintiff by a former moonsiff, and his decree was reversed in appeal before Mr. Forbes, who directed a review of judgment, requiring the moonsiff to satisfy himself in the first instance that due notice of foreclosure was served on the defendant.

The moonsiff, in this instance, decides that it is not proved that notice of foreclosure was served on the defendant, and the plaintiff is therefore nonsuited and referred to a second foreclosure.

In appeal, the plaintiff urges that there has been collusion between the witnesses to the notice and the defendant, and that the evidence of Bhyram Putwary and Junoo Lal, who were present at the time the receipt for the notice was given, is sufficient proof of notice having been served.

JUDGMENT.

I agree with the moonsiff in nonsuiting the appellant, since it is not proved that notice of foreclosure was served on the respondent. I, therefore, uphold the decree, and dismiss the appeal with costs, without causing the attendance of the respondent.

ZILLAH BHAUGULPORE.

PRESENT: W. S. ALEXANDER, Esq., JUDGE.

THE 6TH APRIL 1848.

Case No. 62 of 1846.

Appeal from the decision of Moulvee Allee Buksh, Sudder Ameen of Monghyr.

Endah Koonwur, (Plaintiff,) Appellant,

versus

Ram Golaum Tewaree, Ram Shewuk Tewaree, and others,
(Defendants,) Respondents.

Abdoollah Khan—Wukeel of Appellant,

Zukeeoodeen Ahmed—Wukeel of Respondents.

CLAIM, possession of lands, instituted 26th December 1845, decided 11th November 1846.

This was a suit to regain possession of 25 beegahs of land, out of 204 beegahs 10 cottahs of jagheef lands from which defendants had dispossessed plaintiff, the heir of Byjonath Sing, subadar. The defendants pleaded that they held under a deed of gift executed by Ram Koonwur, widow of the deceased subadar.

The sudder ameen has upheld that instrument and dismissed plaintiff's claim.

In appeal it has been shewn that the instrument on which the decision of the lower court has been founded is a mere copy, and written on a stamp paper of 8 annas' value. By Section 20, Regulation X. of 1829, copy of a deed to answer the same purpose as the original requires the same duty as prescribed for the original deed.

ORDERED,

That the decision of the lower court be set aside and the case restored to the file of the sudder ameen, who will exercise his discretion in granting or not granting the defendants an opportunity of remedying the defect. A strict enquiry in this case is also necessary to ascertain what has become of the original deed, a point not noticed in the decision. The usual order with respect to stamp fees.

THE 29TH APRIL 1848.

Case No. 63 of 1846.

Appeal from the decision of Moulvee Allee Bux, Sudder Ameen of Monghyr.

Mirza Ameer Beg, (Plaintiff,) Appellant,

versus

Soopun Lall, Beharee Lall, Musst. Jewun Koonwur, Jugernath Singh, and Etraj Koonwur, (Defendants,) Respondents.

Reza Hossein Ashrut Allee—Wukeel of Appellant.

Abdoollah Khan and Muddun Thakoor—Wukeels of Respondents.

CLAIM, to set aside a sale, instituted 20th January 1846, decided 12th November 1846.

This suit was commenced by plaintiff, to set aside a sale effected under the following circumstances as set forth in the plaint. The defendants, Soopun Lall and Beharee Lall, took out execution of a decree held by them against the defendant, Musst. Jewun Koonwur, and made application for the sale of a certain orchard comprising 6 beegahs 10 cottahs of rent-free land. The court, before whom the application was pending, directed enquiry to be made in the collector's office, to ascertain whether the rent-free land was registered in the name of Musst. Jewun Koonwur, and, receiving a reply in the negative, ordered a sale to take place of the fruit trees only; which order was carried into effect in August 1841, and the defendant, Ram Chand Singh, became the purchaser at a price of 195 rupees 8 annas. The purchaser proceeded to take possession and in doing so included another parcel of land of 10 cottahs, contiguous to the orchard, thus possessing himself of 7 beegahs. The aforesaid 7 beegahs, however, form a portion of plaintiff's rent-free lands, which comprehend 25 beegahs, a moiety of which was acquired by grant (sunnud) and a moiety by purchase. Plaintiff applied to the court ordering the sale, but was referred to a regular suit, and he now sues for possession and mesne profits.

Musst. Jewun Koonwur answers that her ancestor Gunput Singh, held possession of 8 beegahs of rent-free land, without the right being before questioned. The decreeholders petitioned for the sale of her property in execution of their decree, and the sale took place accordingly.

The decreeholders and the purchaser plead, in their answers, the general issue.

The sudder ameen observes, in his decision, that the right of plaintiff to the land, the subject of the present suit, appears clear from an extract from the book of registry for the year 1802 and from other documents. Plaintiff, however, made no objections to the sale of the

trees for a full year after that event. Had the orchard been planted by him he would assuredly have entered objections to the sale at the time. He is, therefore, entitled to a partial decree for the land only, and plaintiff's costs to be paid by such of the defendants as have not been released from responsibility, but plaintiff must discharge the costs of the decreeholders.

Plaintiff and two of the defendants preferred appeals from this decision. The plaintiff, on the ground that possession of the trees was refused by the lower court, because he had not preferred objections to the sale. He was not aware the sale had taken place till dispossessed by the purchaser. On application to the court ordering the sale, he was directed to commence a suit, the result of which has been the release from responsibility of the parties who caused the sale and an order for him to discharge their costs.

A summons was issued for the respondents to attend.

JUDGMENT.

The decision of the sudder ameen is, in my opinion, incomplete, for he has pronounced a decree for appellant which is worthless and next to impossible to carry into execution. It has been pleaded, moreover, by the defendant, Jewun Koonwur, that the ground has been for many years in possession of her ancestors, who planted the fruit trees some thirty years ago. Now if the sudder ameen was satisfied that appellant had no claim to the trees, and on local enquiry it appeared that the orchard was the growth of nearly that number of years, how could he, under the statute of limitation, decree to appellant possession of the ground on which such orchard stood? The case is a complicated one in consequence of the sale of the trees only having been made by order of the court; and I consider further enquiry necessary in order that a more satisfactory decision on the merits of the case may be pronounced.

ORDERED,

That the appeal be decreed and the decision of the sudder ameen set aside, and the case be returned to the sudder ameen to replace on his file and to decide on its merits after local investigation. The usual order with respect to stamp duties.

THE 29TH APRIL 1848.

No. 64 of 1846.

Appeal from the decision of Moulvee Ally Buksh, Sudder Ameen of Monghyr.

Musst. Jewun Koonwur, (Defendant,) Respondent,

versus

Mirza Ameer Beg, (Plaintiff,) Respondent.

FOR the reasons entered upon in appeal case No. 63 decided this day, pertinent equally to this appeal, the same order as in No. 63.

THE 29TH APRIL 1848.

Case No. 65 of 1846.

*Appeal from the decision of Moulvee Ally Buksh, Sudder Ameen of
Monghyr.*

Ram Chund Sing, (Defendant,) Appellant,
versus

Mirza Ameer Beg, (Plaintiff,) Respondent.

FOR the reasons stated in appeal case No. 63 decided this day,
and applicable to this appeal, the same order as in No. 63.

ZILLAH EAST BURDWAN.

PRESENT: W. LUKE, ESQ., OFFICIATING JUDGE.

THE 3D APRIL 1848.

No. 16.

*Appeal from a decision of the Principal Sudder Ameen, Moulavee
Fuzzul Rubbee, dated 18th August 1847.*

Raghub Ram Mookerjee, (Plaintiff,) Appellant,

versus

Gunga Govind Doss and Gooroo Govind Doss, (Defendants,)
Respondents.

THIS suit was instituted to recover a bond debt for rupees 1,435, 10 annas, 5 gundahs, 1 cowrie, 1 krant, inclusive of interest.

The plaintiff states that, on the 11th Kartick 1246 B. S., he lent the defendants 1,000 rupees, to carry on business at Culna, and they executed a bond on that date to repay the amount in Srabun 1247. In Kartick 1248, 225 rupees were paid in liquidation, but plaintiff failing to recover the balance now seeks to recover it. The defendants deny all knowledge of the bond and of the party who sues them; they deny also ever having resided in or near Culna, for the purpose of carrying on trade there. They further add that they live in the Rajshaye districts some six days' journey from Culna, and that their rank is that of Sircar and not Doss, as erroneously represented by plaintiff.

The principal sudder ameen observes that the bond is nothing more than a promissory note, that if so large a sum as 1,000 rupees had been borrowed, as represented, some equivalent would have been made in the bond in the shape of mortgage. He further states that the evidence of the witnesses attesting the bond, and to the payment of a portion of the debt, is so conflicting and contradictory that not a particle of faith can be placed in it, and that on the other hand the documentary, and oral evidence of the defendants proves that the signatures on the bond are not those of the defendants, and that the rank of the latter is Sircar and not Doss, as stated in the plaint and in the bond: for these and other reasons the principal sudder ameen dismisses the case.

On a careful review of the proceedings, I see no reason to differ with him. In my opinion the suit is a tissue of falsehood and fraud from beginning to end: the plaintiff is evidently the creature of some other party or parties, who have instigated him to institute these proceedings to gratify malicious ends. The appeal is dismissed with costs, and the decision of the lower court affirmed.

THE 3D APRIL 1848.

No. 18.

*Appeal from a decision of the Sudder Ameen, Mahomed Saem,
dated 17th August 1847.*

Madhub Chunder Roy, (Defendant,) Appellant,
versus

Mohes Chunder Mookerjee, (Plaintiff,) Respondent.

THIS suit was instituted to recover a bond debt for Company's rupees 794-10-5, including interest, bond bearing date 19th Chyte 1247 B. S.

The defendant denies the bond, and urges that causes over which he had no control prevented his producing his witnesses. The sudder ameen decrees for the plaintiff; but in my judgment the inquiry, on which his decision is grounded, is incomplete. In the bond it is stated that the money, borrowed by defendant, was to be applied in liquidation of revenue due to the maharajah of Burdwan, and plaintiff, states it was so applied. A reference to the zemindarry accounts would settle this point and show by whom and on whose account the bank notes, specified in the bond, were paid; this has not been done. Again, it would appear that the summons for attendance of defendant's witnesses was not issued, failing the usual deposit. The defendant urges that his village was at that time, August 1847, inundated by the Damooda, and that all communication with the sudder station was cut off; no inquiry on this point has been made. The appeal is decreed and the case remanded to the sudder ameen with a view to his making further investigation with reference to the remarks above made. The value of stamp incurred in preferring this appeal to be refunded in the usual manner.

THE 4TH APRIL 1848.

No. 282.

*Appeal from a decision of the Moonsiff of Bhattoorea, Gopaul
Chunder Ghose, dated 3d July 1846.*

Brijo Soondree Goopt, (Plaintiff,) Appellant,
versus

Ram Mohen Roy, (Defendant,) Respondent.

THE plaintiff in this case sued for maintenance, as widow of the son of defendant, at the rate of 6 rupees per mensem from the 6th Asar 1249, the day on which she was ejected from defendant's house. The defendant replies that the plaintiff left his house in 1241 B. S., and he then gave her 200 rupees in cash and 200 rupees' worth of jewels in lieu of maintenance; and that she then granted a deed of release of all future claims. The moonsiff, in his decision, rejected the ikrar-

nama and decreed for maintenance at rate of 1-4 per mensem. In appeal the judge, deeming the amount inadequate, amended the award of the lower court, increasing the maintenance 1-4 to 5 per mensem. The case was remanded, on special appeal, for further inquiry as to the means of the defendant, and for opinion whether the ikrarnama was, or was not, valid.

After a careful review of the proceedings, I concur with the moonsiff in rejecting the ikrarnama. The evidence of the attesting witnesses is not, I think, trustworthy.

First, because the terms of the ikrarnama are opposed to the shasters: it gives to the plaintiff her personal jewels "*stridhunn*" in addition to other property; and, secondly, because it is improbable that the plaintiff would have consented to receive her own jewels, her right to which could not be disputed, in lieu of maintenance defendant was bound to supply; and further, had the ikrarnama been executed by plaintiff, it is reasonable to suppose some members of defendant's family, or his domestics, must have been privy to the transaction, and would doubtless have borne witness to it. The next point for consideration is, what means the defendant possesses of meeting the claims of the plaintiff? The evidence as to the value of defendant's property is conflicting. Plaintiff states it to be 17,000, rupees; but this is satisfactorily disproved by the documents filed by the defendant. The defendant admits his property to be worth about 460 rupees; but were this the real value, the defendant, admitting the ikrarnama to be true, would scarcely have given the plaintiff 400 rupees' worth of property in lieu of maintenance. The moonsiff would adhere strictly to the shasters, and award maintenance to the extent authorized in similar cases; but that award is not, in my judgment, reasonable or consistent with the position of the parties in life.

I would assume, as the basis of calculation, the amount which defendant states he gave in lieu of maintenance, viz. 400 rupees; this sum, at 6 per cent. per annum, would yield 2 rupees per mensem, which appears sufficient for the plaintiff's support. The decision of the moonsiff is therefore modified to this extent, and the appeal decreed. Respondent paying costs in proportion to the award.

THE 4TH APRIL 1848.

No. 277.

*Appeal from a decision of the Moonsiff of Bhattoorea, Gopaul
Chunder Ghose, dated 3d July 1846.*

Ram Mohun Roy, (Defendant,) Appellant,

versus

Brijo Soondree Goopt, (Plaintiff,) Respondent.

THE respondent in this case is the appellant in case No. 282; the grounds of decision are fully recorded in the latter, and need not be here recapitulated. The appeal is accordingly dismissed.

THE 13TH APRIL 1848.

No. 352.

*Appeal from a decision of the Moonsiff of Suleemabad, Gunga
Churun Shome, dated 30th November 1847.*

Nub Kishore Paul, (Defendant,) Appellant,

versus

Zakcer Mullick and others, (Plaintiffs,) Respondents.

THIS suit was instituted to set aside a summary award, made under Regulation VII. of 1799, and to recover an excess payment on account of rent, amounting, with interest, to Company's rupees 63-9-18.

The plaintiffs state their rent annually is rupees 93-7-8-3; and that for the year 1252 B. S., they paid the gomastah of defendant, who farms the estate, 88 rupees in liquidation, and hold receipts for the same. The defendant demanded an increase on the jumma of 2 annas in the rupee, which plaintiffs resisting, defendant filed a suit against them in the collector's court, and caused a process of attachment to be issued; to stay which the plaintiffs paid defendant rupees 62-5-18, when the latter filed an acknowledgment in the collector's court, and further proceedings were suspended. The defendant states the plaintiffs' jumma annually is Company's rupees 99-12-17-2; that they (plaintiffs) paid in part, on account of 1252 B. S., 44 rupees; that in failure of recovering the balance, viz. rupees 55-12-17-2, defendant sued them summarily; that the plaintiffs having subsequently adjusted the demand, defendant filed a ruffana-meh in the collector's court.

The defendant, in support of his demand, files accounts pertaining to 1252, and the two or three previous years, in which the plaintiffs appear liable for the amount jumma claimed by defendant; but these are full of erasures and alterations,—the details and totals do not correspond, and altogether bear a very suspicious appearance. The defendant's gomastah, in his evidence, states that when his employer rented the estate in 1252 B. S., he only obtained a balance sheet from his predecessor and no accounts in detail; but the fact of the latter having been filed contradicts this statement. I am of opinion that no faith can be placed in it, nor in the accounts which he, the gomastah, declares to be authentic.

The plaintiffs produce dakhilas of rent paid in 1251 B. S., the year previous to that for which defendant took the estate in farm; the aggregate of these dakhilas (which I deem valid documents, as they correspond exactly with documents of a similar nature filed, and pronounced authentic in other suits in which ryots of the same village were concerned) is Company's rupees 93, and witnesses depose to that being the amount which plaintiffs have annually paid; and I think there can be no doubt that that is the sum for which they are

liable, and no more. According to the dakhilas of 1252 B. S., the plaintiffs have paid 88 rupees on account of that year. The defendant's gomastah, however, declares only five of the number filed are written and signed by him, but they all correspond with each other in every respect; and I see no reason to doubt the truth of the whole, especially as the testimony of the gomastah is contrary to what the dakhilas prove (I refer to those he pronounces authentic,) and opposed to the statement of defendant in his reply.

The ruffanameh, filed by defendant in the collector's court, is evidence that he obtained from plaintiffs rupees 62-5-18, which sum the plaintiffs were, in my opinion, compelled to pay to stay the process of attachment, and which amount is in excess of what defendant had a right to demand. The appeal is therefore dismissed, without serving a notice on respondents, and the decision of the lower court affirmed.

THE 14TH APRIL 1848,

No.*341.

Appeal from a decision of the Moonsiff of Suleemabad, Gunga Churun Shome, dated 24th November 1847.

Ramjac Raha, (Defendant,) Appellant,

versus

Byrubbee Dasee and others, (Plaintiffs,) Respondents.

THIS suit was brought to recover arrears of rent, amounting, with interest, to rupees 22-10-17-1, accruing from 1249 to 1252 B. S. The defendant rents certain lands in the village of Ashtye, for which he pays an annual rent of rupees 33-11-8. The defendant does not dispute the jumma, but states that he paid, on account of 1249 B. S., rupees 33-14; but that plaintiffs only gave him credit for 23 rupees. In support of his statement he produces four dakhilas; in that for 1249, the aggregate amount, stated to have been paid, is rupees 33-14. This sum is in excess of that for which defendant was liable, and his reason for the excess payment he cannot satisfactorily explain. The moonsiff attaches no credit to the dakhilas. He observes that, although pertaining to four separate years, they have evidently all been written at one and the same time; and that they bear the signature of the gomastah, whom the defendant has failed to produce to bear testimony to their correctness, though repeatedly called on to do so. On the other hand, the accounts filed by plaintiffs, the correctness of which is sworn to by the gomastah of the village, and which the defendant does not dispute, except in one instance in 1249, show the defendant to be a defaulter for that year to the extent of 10 rupees, and the moonsiff decrees on these grounds for the plaintiffs.

On a review of the proceedings, I see no reason to differ in opinion with him. Except the dakhilas, (which I agree with the moonsiff in thinking have been made up for the occasion), the defendant gives no evidence whatever in support of his statement. The appeal is therefore dismissed, without serving a notice on respondents, and the decision of the lower court affirmed.

THE 17TH APRIL 1848.

No. 1.

Appeal from a decision of the Principal Sudder Ameen, Moulavee Fuzzul Rubbee, dated 22d January 1848.

Ram Chunder Adhikaree, (Plaintiff,) Appellant,

versus

Harroo Chunder Bhattacharj, (Defendant,) Respondent.

THIS suit was brought to recover a bond debt of 1,316 rupees, including interest: bond bearing date 14th Poose 1250.

Defendant denies having borrowed any money or executed any bond. He states that on the date which the bond bears, he was living at Muneerampore, in the 24-Pergunnahs.

The principal sudder ameen attaches no credit to the bond, and dismisses the case. The evidence of the witnesses attesting the bond are utterly unworthy of belief; as their evidence is contradictory in all the important points connected with the execution of the bond, and the payment of the money, &c. It is also clear that enmity has for a long period existed between the defendant and the plaintiff's family, prior to the date on which the bond is stated to have been executed, giving rise to serious charges preferred in the courts of West Burdwan and elsewhere. It is improbable, therefore, that, under such circumstances, the defendant should borrow money from the plaintiff, or place himself under any obligations. I concur with the principal sudder ameen in the belief that this suit has originated in feelings of revenge, with a view to harass and annoy the defendant. The appeal is dismissed without serving a notice on defendant, and the decision of the lower court affirmed.

THE 18TH APRIL 1848.

No. 354.

Appeal from a decision of the Moonsiff of Suleemabad, Gunga Churun Shome, dated 30th November 1847.

Nub Kishore Paul, (Plaintiff,) Appellant,

versus

Zakeer Mullick and others, (Defendants,) Respondents.

THIS suit was instituted to recover an arrear of rent, amounting, with interest, to Company's rupees 15-14-10, on account of the year 1253 B. S. The defendants urge that they have paid the same,

and file a receipt in support of their statement. On the date this suit was filed by plaintiff, the defendants instituted a suit against plaintiff, the merits of which are fully entered into an appeal No. 352. The parties are at issue as regards the annual amount of rent. In the appeal referred to, the jumma for which the respondents are liable, has been determined; and, assuming that as the basis of calculation, the amount of plaintiff's claim, to the close of Sawun 1253, is rupees 32-8. The defendants, in proof of payment, file a dakhila for 30 rupees, paid to the close of Asar 1253. The plaintiff disputes the dakhila, but I have no doubt of its truth; it corresponds in every particular with those filed in Case 352, for the year 1252 B. S., which have been pronounced authentic. On the other hand, the plaintiff files no evidence in support of his claim, save the accounts which have been rejected in Case 352 as unworthy of credit. For these reasons the appeal is dismissed without serving a notice on respondents, and the decision of the lower court affirmed.

THE 18TH APRIL 1848.

No. 353.

Appeal from a decision of the Moonsiff of Suleemabad, Gunja Churun Shome, dated 30th November 1847.

Nub Kishore Paul, (Plaintiff,) Appellant,

versus

Zakeer Mullick and others, (Defendants,) Respondents.

THIS suit was instituted to recover an arrear of rent, amounting to Company's rupees 5-4, on account of 1253 B. S. The circumstances that gave rise to this suit are exactly similar to those stated in Case No. 352. It is, therefore unnecessary to repeat them here. In answer to plaintiff's claim, the defendants file a receipt for 9 rupees. As it corresponds exactly with other dakhilas, pronounced good and valid in the other Cases (Nos. 352 and 354,) its validity cannot be disputed. The same arguments urged against plaintiff's claim, in the cases quoted, are equally applicable in this. The appeal is dismissed without serving a notice on respondents, and the decision of the lower court affirmed.

THE 19TH APRIL 1848.

No. 19.

Appeal from a decision of the Sudder Ameen, Mahomed Saim, dated 30th November 1847.

Jye Gopaul Chattoorjee and others, (Defendants,) Appellants,

versus

Motee Lal Seal, (Plaintiff,) Respondent.

THIS suit was brought to recover rupees 784-5-6, principal and interest, portion of a sum paid by plaintiff to the collector to save

talooka Pran Battee from sale for arrears of revenue. The plaintiff states that on the 28th March 1846, he deposited in the collector's court rupees 1,878-4-4, to stay the sale of the aforesaid estate; that, of this sum, rupees 148-5-8 was the amount of his liabilities. Of the balance, rupees 1,729-14-8, he subsequently recovered from the putneedars rupees 1,284; and he now seeks to recover the difference between these items, after deducting rupees 266-3-10 the amount of rent for Falgoon and Chyte 1252, due by the putneedars to plaintiff as malick of 9 annas 12 gundas' share. The defendants offer no objections to plaintiff's claim, but raise demurrers in their reply and petition of appeal to the proceedings in the case as informal; these having no foundation have been overruled. The plaintiff establishes the fact of his having paid the collector rupees 1,878-4-4, on account of balance of revenue due by talooka Pran Battee; and his accounts, which are duly attested, prove that the defendants are liable for Company's rupees 712-2-6, which amount the sudder ameen decrees with interest. This decision I see no cause to disturb; it is therefore affirmed, and the appeal dismissed without serving a notice on respondent.

THE 20TH APRIL 1848.

No. 5.

Appeal from a decision of the Moonsiff of Bhattoorra, Gopaul Chunder Ghose, dated 30th November 1847.

Sheik Khooda Bux, (Plaintiff,) Appellant,

versus

Seetanath Koowur and others, (Defendants,) Respondents.

THIS suit was brought to recover a bond debt of rupees 30-7; the bond bearing date 15th Chyte 1251. The defendants deny all knowledge of the transaction to which plaintiff refers. The moonsiff observes, in the first place, that the writer of the bond, Ramkoomar Goon, and the attesting witness, Roopchurun, who give evidence in support of plaintiff's claim, are totally unworthy of credit. Both these parties deny that any ill-will exists between them and the defendants; though it is proved by documents, filed by the latter, that they, defendants, are plaintiffs in a suit before the moonsiff, and the said witnesses, defendants. The witness, Ramkoomar Goon, in another case, quoted by the moonsiff, perjured himself; and Rajchunder, though he acknowledges acquaintance with the plaintiff, is unable to describe his person. The moonsiff consequently dismisses the case. On a review of the papers, I see no reason to differ with him in the opinion he has formed; his decision is therefore affirmed, and the appeal dismissed without serving a notice on respondents.

THE 24TH APRIL 1848.

No. 6.

Appeal from a decision of the Moonsiff of Kytee, Pearee Mohun Banerjee, dated 1st December 1847.

Sheik Subjan, (Plaintiff,) Appellant,

versus

Hurris Chunder Mookerjee, (Defendant,) Respondent.

THIS suit was instituted to recover a bond debt for Company's rupees 142-9, including interest.

The defendant denies the bond, and alleges that the suit has been preferred at the instigation of his enemies. The moonsiff rejects the bond. He is of opinion that, although the stamp paper bears date 1843, the bond has been recently written; he remarks that the signature on the bond does not correspond with those on the wukalut-nama, and the copy of the bond written by defendant in the moonsiff's presence; and that two of the witnesses, whose names appear at the foot of the bond, deny having witnessed any such deed; and for these reasons dismisses the case.

The defendant was cited to appear on the 25th Chyete 1253, but failing to do so the suit was proceeding *ex parte*. On the 22d Asar, three months subsequently, the defendant moved the court for permission to allow him to file his answer, which was allowed, though in my judgment on insufficient grounds; his plea being absence from his home. By his own admission he is a mahajun and tookdar, and would therefore, even if absent, have been informed of what was going forward at his house; and his allowing the case to proceed *ex parte*, for three months, is a strong argument in favor of the plaintiff's claim against him. Again, the circumstances under which the two witnesses, Hullothhur and Kulleemoodeen, come forward, are suspicious; they file a petition accusing the plaintiff of having forged a bond and affixed their names to it as attesting witnesses. They would scarcely have volunteered such a petition, unless instigated by an interested party. No doubt their proceeding was intended to benefit the defendant; it has, in my opinion, a contrary tendency to that which the moonsiff gives it, and adds weight to plaintiff's claim. The evidence of the other attesting witnesses is clear and consistent as to the payment of the money and the execution of the bond, &c., and I do not see on what grounds the moonsiff rejected it. The signatures of the defendant, on all documents specified by the moonsiff, appear to me to correspond. For these reasons I cannot arrive at the same conclusion as the lower court; and, deeming the bond a valid document, I decree the appeal with costs, and set aside the decision of the moonsiff.

THE 25TH APRIL 1848.

No. 1.

Appeal from a decision of the Sudder Ameen, Mahomed Saim, dated 29th January 1848.

Judoonath Sondel, for self and as attorney of Srcenath Sondel, insane,
and Govind Nath Sondel, minor, (Plaintiffs,) Appellants,
versus

Kunnuck Monec Debeca, (Defendant,) Respondent.

THIS suit was instituted to set aside an award, made under the provisions of Act IV. of 1840, and to recover possession of a house.

The defendant is the mother of the plaintiff and the parties he represents. Their father, Debnath Sondel, at his death, executed a will in which he appointed his son, Sectanath Sondel to administer to his estate and to divide the property, &c., into four equal shares, but enjoining, at the same time, that whatever steps were taken should be with the sanction and concurrence of the mother; the defendant. Sectanath appears to have died during the plaintiff's minority; and his younger brother, the plaintiff, claiming the right to administer to the estate in the same manner as his brother, has given rise to disputes and law suits, the present amongst others. The plaintiff now sues, in virtue of a power of attorney granted, as he says, by his deceased brother, Sectanath, for his and his brothers' rights in a house. This house is proved to be occupied by the defendant; and the evidence given in the magistrate's court, in the case instituted under Act IV. of 1840, establishes the fact of defendant's possession both before and subsequent to the death of plaintiff's father. The defendant does not dispute the *right* of her son to the house; but she claims the privilege of residing in it under certain clauses of the will aforesaid, which provides that her son, in administering to the estate, shall act with her advice and approval. The object in inserting this clause was, I think, to meet difficulties that might arise such as the one at issue. Without violating the terms of the will, the plaintiff cannot, in my opinion, forcibly eject the defendant, his mother, from the house, the possession of which she has enjoyed both prior and subsequent to her husband's death. The decision therefore of the lower court is, under this view, just and equitable, and is hereby affirmed, and the appeal dismissed with costs.

THE 26TH APRIL 1848.

No. 61.

Appeal from a decision of the Moonsiff of Kytee, Pearee Mohun Banerjee, dated 12th February 1848.

Syud Samin Alee, (Plaintiff,) Appellant,

versus

Beeprodass Bagdee, (Defendant,) Respondent.

THIS suit was brought to recover an arrear of rent for 1250 B. S., amounting, with interest, to Company's rupees 9-4-5-2. The

plaintiff states defendant entered into a verbal arrangement with him, on the 23d Bysack 1250, to cultivate 3 beegahs, 10 cottahs of land at an annual rent of Sicca rupees 6-2; but that he, defendant, failed to pay his rent for that year. The defendant admits having cultivated the land, but upon a *written* agreement, to the intent that plaintiff was to have as rent a share of the produce, which was duly made over to him. The moonsiff is of opinion that the agreement between the parties was a written one. Had it been merely *vivâ voce*, it is highly improbable, he thinks, after the lapse of so long a period, (four years,) the plaintiff should recollect the exact date, which he specifies in his plaint, on which the lease was granted, or in whose presence it was made; and still more unlikely the witnesses should remember these facts.

The defendant states that a "kubooleut" was given by him to plaintiff, of the purport stated in his reply; and his witnesses depose to his having acted up to the terms of it, by giving to plaintiff his share of the produce of the land; and the moonsiff deeming the latter to be the correct view of the case dismisses it. On a review of the proceedings, I see no reason to differ in opinion. The appeal is therefore dismissed, without serving a notice on the respondent.

THE 26TH APRIL 1848.

No. 62.

*Appeal from a decision of the Moonsiff of Suleemabad, Gunga Churun
Shome, dated 25th January 1848.*

Sheik Saim and others, (Defendants,) Appellants,

versus

Sheik Chand Mundul, (Plaintiff,) Respondent.

THIS suit was brought to recover a bond debt, with interest, amounting to rupees 60-12.

The defendant denies having borrowed the said amount.

The moonsiff's enquiry appears incomplete. He has omitted to take the evidence of the party who wrote the bond, and to call on the plaintiff, who from the testimony of his own witnesses is engaged in trade, to produce his accounts for the year in which the transaction under review is stated to have occurred. Ordered therefore that the appeal be decreed, and the case remanded to the moonsiff for further investigation with reference to the foregoing remarks. The value of stamp used in preferring this appeal, to be refunded in the usual manner.

THE 27TH APRIL 1848.

No. 65.

Appeal from a decision of the Moonsiff of Samunttee, Sreekant Sing, dated 28th January 1848.

Bishnath Sing Roy, (Plaintiff,) Appellant,

versus

Bungsee Paik, (Defendant,) Respondent.

THE plaintiff sues to recover arrears of rent, with interest, accruing from 1249 to 30th Augun 1253 B. S.

The moonsiff's inquiry is incomplete. The plaintiff, in his rejoinder, urges that certain documents, which he names, may be called for as evidence in support of his claim, but the moonsiff has taken no steps in furtherance of plaintiff's request; and as the documents referred to are material to the issue of the suit, the moonsiff should have required them to be filed. Ordered therefore that the appeal be decreed, and the case remanded to the moonsiff to dispose of it with reference to the remarks above made. The value of stamp used in preferring this appeal to be refunded in the usual manner.

THE 27TH APRIL 1848.

No. 67.

Appeal from a decision of the Moonsiff of Burdwan, Mr. J. S. Bell, dated 27th January 1848.

Juheeroodeen and others, (Plaintiffs,) Appellants,

versus

Sheik Muddun, (Defendant,) Respondent,

PLAINTIFFS sue to fix the rent of a tank and of certain trees on its bank, at the rate of rupees 15-4 annually.

It appears that the defendant, in 1241 B. S., received a pottah from the late proprietors, Pheloo and Dana Beebee, granting him the aforesaid tank, and 1 beegah 11 cottahs of land, the site of a house, in perpetuity, at the annual rate of 2 Sicca rupees. In 1243 the aforesaid ladies sold the above to the plaintiffs, who proceeded to oust the defendant from possession. He filed a suit No. 1499 against the plaintiffs, and obtained a decree in the principal sudder ameen's court, pronouncing his title deed good and valid. The object of plaintiffs in filing the present suit is evidently to set aside, if possible, the principal sudder ameen's decision, from which they made no appeal, by reviving a point, involved in the former case, which has been finally disposed of. The rate, at which plaintiffs are entitled to claim rent from defendant, is clearly determined in mokurreree pottah, viz., 2 Sicca rupees annually for the whole grant; and plaintiffs are entitled to rent of tank in that proportion. The moon-

siff has adjusted the demand of plaintiffs upon this principle; and, on a review of the proceedings, I see no reason to disturb his decision, which is hereby affirmed, and the appeal dismissed without serving a notice on respondent.

THE 28TH APRIL 1848.

No. 68.

Appeal from a decision of the Moonsiff of Madpore, Dubeeroodeen Mahomed, dated 28th January 1848.

Seboo Persad Hajra, (Defendant,) Appellant,

versus

Rajib Lochun Juss, (Plaintiff,) Respondent.

THE plaintiff sues to recover possession of certain fisheries, connected with a lakhiraj tank, with mesne profits arising therefrom from the year 1251 to 1253.

The plaintiff states that there were two water-courses; one on the north, the other on the south of a lakhiraj tank in his possession; at the mouths of these were two "arrahs," or fisheries. In the month of Asin 1251 B. S., the appellant forcibly dispossessed the plaintiff of his fisheries and destroyed the water-courses.

Defendant, (appellant) Seeboo Persad, urges in reply that the tank is not lakhiraj; and that he holds possession of the fisheries in virtue of a pottah granted him by the late talookdar. The moonsiff, after a personal visit to the spot, is of opinion that the plaintiff has clearly established his claim and the fact of forcible dispossession; and decrees for plaintiff, with such damages as in his judgment, have been sustained. The defendant, Seeboo Persad Hajra, prefers an appeal from this decision, on the plea that the moonsiff had no jurisdiction; that the point at issue is whether the matter in dispute is mal or lakhiraj property, a question which the moonsiff could not legally investigate. In disputes of the nature described in Section 30, Regulation II. of 1819, it is necessary that the talookdar be a party to the suit; but the defendant (appellant) in this case does not belong to either class of the individuals specified in the aforesaid regulation; his objection is therefore overruled. Admitting that the right of possession of the tank was at issue in the present case, which it is not, he, as a ryot, could not be recognized as a party entitled to dispute it. As regards the possession of the fisheries, the evidence in favor of plaintiff is unquestionable; and I see no reason to disturb the award of the lower court, which is hereby affirmed and the appeal dismissed without serving a notice on the respondent.

ZILLAH WEST BURDWAN.

PRESENT: C. GARSTIN, ESQ., JUDGE.

THE 4TH APRIL 1848.

Case No. 246 of 1847.

Appeal from the decision of Moulvee Noorul Husain, Moonsiff of Bishenpoor, dated the 27th July 1847.

Musst. Doorga Mune, pauper, (Plaintiff,) Appellant,
versus

Ramchund Rae, (Defendant,) Respondent.

THIS suit is brought by the plaintiff (appellant) to recover the value of certain effects and property forcibly carried off by the defendant. She states that she had taken, at an yearly jumma of 4 annas, $2\frac{1}{2}$ cottahs of the defendant's lakhiraj land and resided on it, having built a house which cost her 20 rupees. That in Chyt 1246, the defendant turned her out of it, and destroyed the house and forcibly carried off all her effects; that she complained against him for this in the foudaree, and on the 20th March 1840, he was sentenced for it to 15 days imprisonment, and to pay a fine of 50 rupees, or in default to imprisonment for 15 days more, whilst she was at the same time directed to bring an action against him for the value of the things thus taken from her; that in conformity to the above order, she now brings this suit, laying her claim, with interest, &c. at the sum of rupees 157.

On the 31st March 1846, the defendant, Ramchand, appointed a vakeel to defend the suit, but subsequent to this he appears to have done nothing, and the case has consequently all along been proceeded with *ex parte*.

In the first instance the case was dismissed on default; but on appeal, on the 6th November 1846, this order was reversed, and it was remanded to the moonsiff, who after completing his enquiries on the 27th July 1847, decreed it for the plaintiff, remarking that although the plaintiff had not fully made good her claim, still it was clear that the defendant (who moreover had not defended the suit) had taken away some of her property; that he had examined two witnesses who both admitted that such was the case, though they could not specify exactly what had been carried away; that one of them (a jemadar of police) stated fairly that when he was deputed to make some enquiries into the matter, the defendant had brought forward a few cooking utensils, &c., which he said belonged to her and offered to restore them; but plaintiff refused to take them, unless he gave back the whole of the things taken; that the value of the things thus offered, appears to have been 11 rupees, and that as this offer on the

part of the defendant was an admission that he had taken them, he decrees the case against him to this amount; but, at the same time, he holds the plaintiff (who ought, he says, to have taken them when offered,) liable for all the costs of the suit.

The plaintiff appeals, stating that the enquiry is incomplete, and that all her witnesses have not been examined, and that local enquiry should have been made; but above all that she has done nothing to make herself liable for costs, inasmuch as she was not bound to take back only a portion of the things which defendant had taken from her.

I have gone carefully through this case and the proceedings held in the foudjary court, and the result is a conviction that the present complaint is well founded and that the defendant really carried off most of the things stated, though being a pauper she can bring no evidence to shew what was actually taken. I think, with the moonsiff, that the only things fairly brought home to him are those he offered to restore; and though I have no doubt more were taken, yet failing all proof (and there is no use in returning the case for further enquiry as the plaintiff admits that no other witness will come forward for her) it is of course impossible to award her more than the value thus allowed to have been taken from her. I agree therefore with the moonsiff in this part of his order, but differ in toto as to the rest; and do not clearly see on what grounds he holds her responsible for costs. She certainly was not bound to have taken the few things offered her, and clearly had a fair right to enter the present suit; and though she has proved only a part of her claim, I think, under all the facts, that the defendant is liable to her for any loss or expense incurred by prosecuting it. Under these circumstances I have decreed the appeal, amending the moonsiff's orders with regard to costs, which are to be paid in full by the defendant; and giving plaintiff (appellant) interest on the 11 rupees awarded by him from the date of the things being taken from her to the time of payment.

THE 5TH APRIL 1848.

Case No. 304 of 1844.

Appeal from the decision of Moulvee Abdool Uzzeez, Moonsiff of Oundah, dated the 6th July 1844.

Juggurnath Chatterjea, (Defendant,) Appellant,

versus

Pran Chund Bose, (Plaintiff,) Respondent.

THIS case decided by my predecessor on the 10th July 1845, and admitted to special appeal in the Sudder Dewanny Adawlut on the 12th May 1847, (Present C. Tucker, Esq.,) was remanded by that Court* for further and local enquiry and investigation.

* See page 148 of the Sudder Dewanny Reports, No. 736 of 1845.

In pursuance of the above instructions, I deputed an ameen to proceed to mouzah Bunmalleepoor, and ascertain by personal inspection and enquiry whether the plaintiff's (respondent's) statement of there being but one jumma in the name of Sonatun Biswas, and of his (plaintiff's) holding 11-11-2-2 of it, was true.

This he has accordingly done, and the result in every way corroborates plaintiff's statement. The report states that there is in this village but one jumma in Sonatun's name, viz. 20-10, and that the lands held under it are 26 beegahs, 10 cottahs; that 15 beegahs 10 cottahs of this have been made over to the plaintiff at a jumma of 11-11-2-2 as he states, and are now held by him. This I consider quite conclusive as to the truth of the plaint.

It will be observed in the published remarks of the Sudder Dewanny Adawlut, above spoken of, that allusion is made to a second case similar to this one, and on which my predecessor's orders were based; and as the defendant (appellant) cites it as proving his claim, it is necessary briefly to notice it here.

This case was brought forward by this same Sonatun Biswas against the present defendant (appellant) to set aside two orders which the latter had obtained against him under Regulations V. of 1812, and VII. of 1799, and which orders were upheld by Mr. Deedes. This case also was admitted to special appeal in the Sudder Dewanny

* See page 114 of the Sudder Dewanny Reports, No. 74 of 1845.

Adawlut, but was nonsuited on the 26th February last,* as being irregular. The defendant (appellant) now states that this nonsuit in Sonatun's case effectually bars and stops plaintiff's (respondent's) claim in the present one, inasmuch as it virtually upholds the proceedings under Regulations V. and VII., and makes his (Sonatun's) jumma still 20-10, and this disproves the plaintiff's (respondent's) claim of his holding a portion (11-11-2-2,) of it separately.

I cannot however at all concur in this opinion, as the Court, I think, have pronounced no opinion whatever as to the validity of Sonatun's statement, and his case has been nonsuited not from any defect inherent in his claim, but solely from his having irregularly mixed up two different and distinct matters in one and the same plaint; and it certainly would be hard and unjust, I think, that his (Sonatun's) error should affect the present party who had nothing to do with it.

With reference to all the proceedings held in this case, I am clearly of opinion that the plaintiff (respondent) has fully established his claim, and that there is no reason to disturb the moonsiff's orders relative to it: wherefore (my predecessor's orders having already been reversed) I have confirmed them, dismissing the appeal and making defendant (appellant) liable for costs.

THE 19TH APRIL 1848.

Case No. 20 of 1847.

Appeal from the decision of Baboo Chundur Seekur Chowdry, Principal Sudder Ameen, dated the 27th November 1847.

Khettur Mohun Banerjea, (Defendant,) Appellant,

versus

Musst. Lukhee Monee Debee, his wife, (Plaintiff,) Respondent.

Rupees 517-10., price of rice.

THIS suit is brought by the plaintiff (respondent) to 'recover the value of some rice which the defendant had agreed to give her. She states that the defendant (her husband) having taken away from her some rice and other property, she brought an action against him for the value in the principal sudder ameen's court, which action was eventually settled on his (defendant's) agreeing to give up to her a stack containing 275 maps of rice, and on these terms the case was closed and settled in August 1846; that afterwards the defendant, on returning home, pointed out a stack, which he said contained the quantity promised, and told her that she might take it, but on her proceeding to do this and sell a part of it, he would not allow her to do so; and as he has in this way failed in performing his agreement, she now brings this suit, to recover the value of the rice at 3 sullees per rupee, with interest, &c., laying her claim as above stated.

The defendant, in reply, states that ever since he married a second wife, the plaintiff has been quarrelling with him; and that when he prevented her carrying off his property (which she was removing to her father's house) she instituted the suit abovementioned against him; that considering it disgraceful to have a case of this kind in court, he agreed to give her a stack containing 275 maps of rice, and thus made it up; that he accordingly did give it her, and she placed it in charge of some of her own people and sold some part of it to pay her debts, &c.; and that in short she has no further claim on him for it; that the present suit has also been wrongly valued, as at the time spoken of rice was worth $5\frac{1}{2}$ sullees per rupee, and not 3 as she states.

Plaintiff rejoins that the stack the defendant speaks of is still on his premises, and that she has not been allowed to touch it at all.

The principal sudder ameen, after completing his enquiries, and ascertaining from local enquiry through an ameen the real state of the case, on the 27th November 1847 decides it in favour of the plaintiff. He details at length the evidence taken both in his own court and before the ameen, and remarks on the unsatisfactory nature of that adduced by the defendant, many of whose witnesses are his (defendant's) second wife's relations; and states his conviction that the rice has never been given to the plaintiff. He therefore

awards her the 275 maps promised by the defendant; but, owing to the contradictory statements of the value of it, takes an average value of 4 sullees 5 seers per rupee, which makes for the whole 517-10, but only gives interest from the date of order up to the time of payment.

Defendant appeals, repeating his former statement of his having made up the first case on account of the disgrace arising from its being in court, and he adds a good deal of his reasons for separating from the plaintiff, which, however, has nothing to do with the point at issue. He states that after the above decision he pointed out to her the stack of rice, and says that she took it, but has again been induced to bring forward this false complaint; that the principal sudder ameen has been guided too much by the ameen's report, which is false and one-sided; and that many of the plaintiff's witnesses are his (defendant's) enemies, and one of them a witness by profession, &c.; that plaintiff has really had the rice, and now points out another and smaller stack which she pretends he (defendant) would not let her take, &c.

It is admitted on both sides, that the defendant (appellant) in the former suit agreed to give the plaintiff (respondent) a stack containing 275 maps of rice, and the only question is whether he has done so. I think not, and the principal sudder ameen's enquires appear quite conclusive in this point. The defendant (appellant) was bound (after the orders passed in the first case) to have proved beyond all doubt the fact of his having performed his engagement, and this he has quite failed in doing, for the mere fact of pointing out a stack, and saying that plaintiff (respondent) might take it, is clearly not enough. Under all the facts of the case, I see no reason whatever to interfere with the principal sudder ameen's orders in this case; wherefore I have confirmed them.

THE 28TH APRIL 1848.

Case No. 177 of 1846.

Appeal from the decision of Moulavee Tuffuzzul Ruhman, Moonsiff of Aogsaon, dated the 16th May 1846.

Musst. Bhaggeobuttee, (Plaintiff,) Appellant,

versus

Nehal Chund Samunt, (Defendant,) Respondent.

THIS suit is brought to reverse a summary order passed by the collector, and to recover certain balances due by the defendant at a jumma of rupees 38-2-2. The plaint sets forth that plaintiff purchased the dur-mokurruree of mouzah Radhamohunpoor in 1250 B. S., and then measured and surveyed all the lands in it; that the result of this survey shewed that the defendant held in all with certain "nao abad" lands 52 beegahs 16 cottahs, upon which in Jait 1251, he gave her

an engagement (kubooleut) agreeing to pay for them rupees 83-2-2 annually; that up to Aughun of that year he paid only rupees 10-8, and the rest being in balance she attached his crops under the provisions of Regulation V. of 1812; that the defendant on this gave security for the amount, and the case coming before the collector, that officer declared the kubooleut given by the defendant invalid and bad, and thereby deprived plaintiff of her just rights, wherefore she now enters the present claim, seeking to have the collector's orders set aside, and the balances due under the kubooleut made good by the defendant.

The defendant, in reply, denies giving the kubooleut at all, and states that he has in this mouzah but 25 beegahs 7 cottahs of land, standing at a jumma of Company's rupees 12-14, and never paid more than this; that he has no "nao abad" land at all; that a former talookdar made a somewhat similar attempt to enhance his jumma, but totally failed; and that there is no reason why he should have agreed to pay this increased jumma; that the kubooleut is dated previous to the completion of the measurement in which it is said to be founded, and was not ever written in plaintiff's talook; and that he has paid up his whole jumma for the year for which plaintiff complains, &c.

Both parties then gave in statements of the land in dispute, and describe its limits and boundaries, &c.; and a third party also (Rashbeharee Bhose,) comes forward with a claim to a portion of it; and the moonsiff, after deputing an ameen to make local enquiry into the facts, on the 16th May decides the case. He remarks that although the defendant states he has paid his full jumma of rupees 12-14, he has failed in proving more than the rupees 10-8 admitted by the plaintiff, and is therefore fairly liable for the rest; that however he (the moonsiff) cannot believe in the validity of the kubooleut said to have been given by the defendant, and that it has no kistbundee written on the back of it as is customary here, and which it would no doubt have had if genuine; that it seems that former talookdar brought a nearly similar case against this very defendant, but failed in establishing it; and that it is not at all probable that the defendant would have agreed to such an increase to his jumma; that plaintiff's witnesses admit that defendant has no new lands, and that defendant has tilled them for years, and has pottahs, &c. in proof of this; that although the ameen's proceedings shew that the defendant holds 44 beegahs 8 cottahs of land, the greater part of it is claimed by other persons and some apparently belongs to the third party; but, at any rate, it matters little in the present case, which turns on the validity of the kubooleut. He therefore rejects it, and thereby upholds the collector's order making defendant's jumma rupees 12-14, though, at the same time, he decrees the case against defendant as regards the balance of rupees 2-7 still due, and of which he has no proof of payment.

The talookdar (plaintiff) appeals. She states that the kubooleut was voluntarily given by the defendant and is good; that the failure of her predecessor's proceedings against defendant can in no way injure her claim, neither can the mere fact of the kistbundee's not being written on the back of it, be a sufficient cause to consider it invalid; that the ameen's report shews that the defendant has 44 beegahs of land, and yet by this order the moonsiff fixes its jumma at only 12 rupees, whilst defendant himself admits that he has 25 beegahs, and in fact the moonsiff's order virtually makes over some of her land to the third party; that, in short, the kubooleut is valid and good, and has been fully proved so by the evidence taken in the case, &c.

The real point for consideration in this case appears to me to be the validity of the kubooleut said to have been given by the defendant (respondent); and I must say I quite agree with the moonsiff in the opinion he holds of it. The plaintiff (appellant) cannot deny that the jumma hitherto paid by defendant was but rupees 12-14; and the question is, did he (defendant) agree to pay at the enhanced rate now sued for? It is certain that a former talookdar brought a suit somewhat similar to the present one against him, but lost it, and it is at least highly improbable that he would (having gained that case) so easily have agreed to have his rent raised so much as he is said to have done, and in fact the plaintiff's (appellant's) own witnesses admit that the defendant got no new lands at the time stated. It is true that the ameen's report states that he (defendant) holds 44 beegahs of land, but the greater portion of it is disputed and claimed by others; and besides the ameen only measured the lands which plaintiff (appellant) said were held by the defendant, and not the 25 beegahs he admits that he holds; and after all the moonsiff appears to have decided the case without reference to this report, and I hardly see indeed why he was ever sent at all. On the whole I think with the moonsiff that the plaintiff (appellant) has quite failed in proving his case, and that the kubooleut is bad and invalid; and, under these circumstances, as I see no cause to interfere with the orders already passed, I have affirmed them, dismissing the appeal and holding the plaintiff (appellant) liable for costs.

THE 28TH APRIL 1848.

Case No. 175 of 1846.

Appeal from the decision of Moulvee Tuffuzzul-Ruhman, Moonsiff of Aoosgaon, dated the 19th May 1846.

Musst. Bhaggeobutee, (Defendant,) Appellant,

versus

Nehal Chand, (Plaintiff,) Respondent.

Rupees 82-4-0, loss of crops by illegal attachment.

THIS suit was instituted by the plaintiff, (the defendant in case No. 177,) to recover the value of some crops illegally attached by

her, and which were not restored to him when the attachment was taken off. The plaint sets forth, that the defendant on the plea of his (plaintiff's) having given her a kubooleut promising to pay an enhanced jumma of rupees 83-2-2, and being in balance for it, attached some of his rice crops, which were put in charge of two persons named Puresh and Jonardhun; but on his (plaintiff's) giving security for them, the attachment was removed, and the crops released and ordered to be restored to him; that the quantity attached was 14 kahuns 2 puns of rice and straw, but the quantity actually restored was but 8 kahuns 4 puns; and the rest having been made away with, he (plaintiff) now seeks to recover the value, laying his claim as above stated.

The defendant, in reply, admits having attached the plaintiff's crops under the provisions of Régulation V. of 1812, but denies that any portion of it was lost; that the crops, when attached, were under charge of the police, and that plaintiff has no claim upon her.

Puresh (defendant) also admits the attachment, and says that 51 maps and 12 kahuns of straw were attached, but says that plaintiff got it back on giving security, though he gave no receipt for it.

Modosoodun, gomashtah, replies to the same effect as the talookdar defendant.

Jonardhun denies ever having had charge of any portion at all.

On the 29th May 1846, the moonsiff decrees the case for the plaintiff, considering it established that 14 kahuns 4 puns were attached, and only rupees 8-2 (the quantity admitted by plaintiff) restored. He enters at some length into the details of the case, and remarks that (the plaintiff having given no receipt) a mere report from the darogah that the crop was restored is no proof of his having got back the full quantity attached, and that the defendant has failed in bringing forward the peadah who was over it. He estimates the loss incurred at rupees 77-4-3, and holds the defendant talookdar liable for it.

The defendant appeals, repeating that Kalee Churn peadah, who was sent to attach the property, entrusted it to Puresh and Jonardhun, and when its restoration (plaintiff having given security) was ordered, gave back the whole before many witnesses,—the darogah reporting it at the same time to the collector; and that if the plaintiff had not got back the whole, he certainly would have noticed this in the Regulation V. suit, which was then going on, or at all events have complained to the darogah about it, neither of which he did; that the season in which the attachment was made being a very dry one, it is not possible that the produce of the lands could have been what the plaintiff (respondent) states; that the darogah's report proves the restoration of the whole, and if the peadah took no receipt for it, she (plaintiff) is not to blame for this; that the moonsiff might easily have had up the peadah, and taken his evidence in the matter; that the enquiry is incomplete, and the whole thing got up in revenge for her having instituted the other case against the plaintiff.

I must say that I am not satisfied with the moonsiff's proceedings in this case, and think them incomplete. It is quite clear that the crops were illegally attached, and very probably some portion lost; but I do not think it has been clearly shewn how much was attached, and how much restored. The attachment papers would shew that only 51 maps of rice and 12 kahuns of straw were seized, which is very much less than what the plaintiff (respondent) states, but it may be that this is under-stated; but, at all events, I think it would be as well to examine both the *kork* ameen and the peadah on these points before coming to a conclusion. Deeming the enquiry incomplete I have decreed the appeal, reversing the moonsiff's order and remanding the case for further and full enquiry; after which it will of course be decided on the merits, and orders passed relative to the costs of suit. The usual order passed for the return of stamp.

ZILLAH CHITTAGONG.

PRESENT: F. SKIPWITH, ESQ., OFFICIATING JUDGE.

THE 4TH APRIL 1848.

No. 695 of 1846.

*Appeal from a decision of Mr. Finney, Town Moonsiff, dated
July 9th, 1846.*

Musst. Sooah, wife of Sonaram, (Plaintiff,) Appellant,

versus

Jeebun Moonshee, Mahomed Ally Serang, Musst. Teelee, and
Bacharam, (Defendants,) Respondents.

It appears that the appellant's husband, Sonaram, and one Jectram and others came in the same vessel from Akyab, when they were wrecked, and Jeetram was drowned. Sonaram had, while in Akyab, saved some money and a vessel containing 258 rupees was saved by him, regarding which a squabble occurred between him and Bacharam, a relation of Jeetram, deceased. The money was therefore deposited with Mahomed Ally Serang, who paid all with the exception of rupees 61 to Jeebun Moonshee on his arrival in Chittagong.

The moonsiff says that, as the parties agreed to arbitration, Jeebun Moonshee cannot be held responsible; and he therefore decreed the sum of rupees 61 only against the serang, for the money lost by him when in his charge.

From the evidence adduced in the moonsiff's court, it is established by five witnesses that Sonaram saved rupees 258 from the wreck, which were claimed by Bacharam as belonging to the estate of Jeetram, deceased. Bacharam, however, produced no evidence in the moonsiff's court that Jeetram had brought with him any money on board the ship, and although duly served with notice has not appeared in this court.

There is no evidence in the case to shew that both parties agreed to abide by the award of Jeebun Moonshee, nor any papers to shew on what principle the award was made. It is only proved that Jeebun did issue an award declaring Musst. Teelee, the mother of Sonaram, deceased, entitled to rupees 70, and Bacharam to rupees 127; but as this award is irregular, and disputed by the appel-

lant, it cannot be upheld by this court. Jeebun Moonshee is, therefore, in my opinion, responsible; and I accordingly amend the moonsiff's decree, and decide that Mahomed Ally Serang shall pay the sum of rupees 61 with interest, and Musst. Teelee the sum of rupees 70, and Bacharam rupees 127; and that in the event of these two last sums, together with interest, not being realized from Musst. Teelee and Bacharam, respectively, they shall, with interest, be realized from Jeebun Moonshee. The costs of appeal and first suit, with interest, to be paid by the parties according to the amount awarded against them.

THE 4TH APRIL 1848.

No. 701 of 1846.

Appeal from the decision of Moulvie Guda Hussen, dated July 16th, 1846.

Gomance Burkundauze, (Plaintiff,) Appellant,

versus

Hussun Ally and others, (Defendants,) Respondents.

THE appellant states that on the east side of his dwelling house there is a small hole belonging to him, to the north of which the respondents have erected a necessary, the unpleasant odours from which have compelled him to abandon it; and that moreover being built above the drain leading to his pond, the water has become impure, and he therefore brings this action for the removal of the necessary.

The respondents admit having built the necessary, but deny that they have ousted the appellant from his house, or injured the water of his pond thereby.

The moonsiff, considering the respondents' statement proved in all particulars, dismissed the case; and the appellant now urges that all his witnesses were not summoned, and that the moonsiff wholly overlooked the defence filed by the zemeendar, which proved the injury done to his tank.

The evidence adduced by the appellant does not prove that he suffers detriment from the existence of the necessary, for both he and other people drink the water of the tank as before. He only named five witnesses, the evidence of four of whom was taken; and the appellant did not urge that measures should be taken for the attendance of the fifth. The defence filed by the zemeendar cannot be used as evidence in the appellant's favour, as he is an interested party in the case. I therefore confirm the moonsiff's decision, and dismiss the appeal.

THE 13TH APRIL 1848.

No. 275 of 1847.

*Appeal from the decision of Ally Newaz, Moonsiff of Buteegree,
dated 28th April 1847.*

Allemoodeen, (Defendant,) Appellant,

versus

Musst. Zilkon Khaton, (Plaintiff,) Respondent.

THE respondent brought an action in the moonsiff's court to set aside a pottah granted to Jan Ally by Kureem Bux and Allemoodeen, the joint proprietors of turuf Ashrufwaris. The moonsiff dismissed the respondent's claim with costs, and upheld the pottah granted by Kureem Bux and the appellant, Allemoodeen.

Allemoodeen appeals on the grounds of his never having been served with notice of the suit, and of his never having signed the pottah by which he says he is defrauded of his just rights.

It appears that the appellant was not served with notice, the return made on the back both of the itelahnamah and ishteharnamah being that he was absent from home. The pottah is signed by Kureem Bux on his behalf, and it does not appear that he had any authority to do so. I therefore reverse the moonsiff's decision, and return the case for re-investigation. The appellant is entitled to receive back the price of his stamp paper.

THE 13TH APRIL 1848.

No. 278 of 1846.

*Appeal from the decision of Poorno Chunder, Moonsiff of Howlah,
dated 6th May 1847.*

Dabe Churn, (Defendant,) Appellant,

versus

Kishno Churn, son of Sremontram, deceased, (Plaintiff,)

Respondent.

THE respondent says he was in possession of 1 krant, 2 gundahs, 3 cowrees of lakheraj land in mouzah Heitgoun, inherited from his ancestors, and held by his father, Sremontram; and that in 1202 Mughee, the defendants, Dabe Churn and others, ousted him, and he therefore sues for rent and mesne profits.

The defendant, Dabe Churn, admits that he is in possession, but pleads a pottah given him by Musst. Meetoo.

Musst. Meetoo says she is the wife of one Bolanath, deceased, who was a partner with Sremontram; and that as respondent has not made her a party to the suit, he ought to be nonsuited; and she says she has given a pottah to Dabe Churn.

There is no evidence to shew that Musst. Meetoo's husband was a partner with Sremontram, or that Dabe Churn holds the land on a pottah from her, or that he pays her rent; and her plea for a nonsuit is not therefore admissible.

Two or three witnesses say they have seen the appellant cultivate the land, and pay rent to Musst. Meetoo; but when, or how, they do not know. Their evidence therefore is of no value.

The respondent filed no proof to shew that Sreemontram, his father, was in exclusive possession; but the moonsiff deputed an ameen to measure the land and hold a local enquiry; and from his papers it is proved that the land was formerly in Sreemontram's possession, and was afterwards cultivated by Mogul Chand on behalf of the respondent only, and that Dabe Churn and others forcibly dispossessed him by taking away his plough, and have been in possession ever since. I therefore see no sufficient reason to disturb the moonsiff's decision, and accordingly dismiss the appeal.

THE 25TH APRIL 1848.

No. 281 of 1847.

Appeal from the decision of Ally Newaz, Moonsiff of Buteearree, dated 1st May 1847.

Mahomed Mundeer, (Plaintiff,) Appellant,

versus

The Deputy Collector of Bullooh and others, (Defendants,) Respondents.

THIS an action brought by the appellant, to recover a sum of money alleged to have been wrongfully taken from him by the defendant, while an estate, in which he (the appellant) had an under tenure, was under khas management.

The collector pleads that chur Mugderrah, in which the appellant has an under tenure, was resumed under Regulation II. of 1819, and was for a short time held by him; but that it had been released by the special commissioner, under whose decree he had accounted to the proprietor for the whole of the rents received by him.

The moonsiff, considering the collector's plea valid, after the necessary investigation dismissed the case, and for the undermentioned reasons I concur with him.

It is proved that the deputy collector held possession of chur Mugderrah for a short time, and collected rent from the appellant as alleged by him; but when his possession was declared to be wrongful by the special commissioner, he gave it up to the lawful proprietor, Raj Kishore Nundee, and accounted to him for the mesne profits.

The appellant, who holds an under-tenure only in the estate, was not even a party to the suit, and is not one with whom the collector could have entered into any arrangement without the concurrence of the proprietor. The decision of the special commissioner has been fully carried into effect by the collector; and if, therefore, the appellant has been aggrieved (and he does not even plead that rent has been twice taken from him in one year for the same land), the collector is not the person to whom he should look for redress. I therefore confirm the moonsiff's decision, and dismiss the appeal.

THE 26TH APRIL 1848.

No. 242 of 1847.

*Appeal from the decision of Kheiroollah Shah Budukshanee,
Moonsiff of Zarourgunge, dated 4th April 1847.*

Dununjee, (Defendant,) Appellant,

versus

Bishenath Shah, (Plaintiff,) Respondent.

THIS was an action for 6 rupees lent by the respondent to the appellant, and for which the moonsiff passed a decree.

The appellant states that of his two brothers upon whom a decree was passed, one was not in the country at the time of the alleged transaction; and that the enquiries of the moonsiff were irregular, the investigation having been made by an ameen.

On examining the case, it is apparent that the proceedings of the moonsiff are altogether irregular. The brothers of the appellant were from home, and the moonsiff has taken no evidence to shew that the necessary notices were served. A subpœna was issued upon four witnesses, two of whom attended the court and gave their depositions. The other two did not attend, nor did the moonsiff take any measures for enforcing their attendance, but deputed an ameen into the country, who took the evidence of various inhabitants of the village and made a report to the moonsiff, upon which the moonsiff passed a decree. I therefore reverse the moonsiff's decision, and return it to him for re-investigation *de novo*. The value of the stamp to be returned to appellant.

THE 26TH APRIL 1848.

No. 243 of 1847.

Appeal from the decision of Ally Newaz, Moonsiff of Buteecaree, dated 24th April 1847.

Munsoor Ally, (Defendant,) Appellant,

versus

Shumsheer Ally Shah, (Plaintiff,) Respondent.

THIS is a case brought to determine whether the appellant shall pay 25 arees of rice for 2 kanees of land, the rent-free property of the respondent ; or, as he asserts, the sum of rupees 1-14 per annum for 1 kaneer 10 gundahs.

The moonsiff, after a very careful examination, decided that the respondent was entitled to receive rice at the rate of 25 arees for each kaneer, for 1 k., 12 g., 3 c., 3 k., found to be actually cultivated by him.

The respondent asserted that the appellant had, in the year 1190, executed a kubooleut for rice ; but this kubooleut he was unable to produce. The appellant asserted that he has always paid rent in money ; but can give no proof of this, except during the time the land was held under khas, or management by the collector. Had he paid rent in money and not in rice, he would have undoubtedly filed his dakhilas. The witnesses on behalf of the respondent in the presence of the moonsiff, and the witnesses of both parties before the ameen assert that appellant's father, previous to the land being held khas, invariably paid his rent in rice ; and I therefore confirm the moonsiff's decision, and dismiss the appeal.

THE 27TH APRIL 1848.

No. 261.

Appeal from the decision of Baboo Poorno Chunder, Moonsiff of Howlah, dated 21st April 1847.

Ramsoonder, (Defendant,) Appellant,

versus

Musst. Zeiah alias Latooree, daughter of Doorgaram, (Plaintiff,) Respondent.

THIS was an action brought by the respondent, to recover the value of five cows and calves, the property of respondent, illegally attached and sold for rent as the property of her father, Doorgaram Jemadar.

The appellant filed no proof that the cows were the property of Doorgaram ; and the moonsiff, on proof of the respondent's claim, gave a decree in her favor.

The appellant says that when he went to the moonsiff's court with the witnesses, he found the case had been already decided; and he urges that he had not sufficient time allowed him.

On examining the papers I find that the appellant's witnesses were duly served with notice; and that on the 15th February, 31st March, and 19th April, he was called upon to take measures for causing their attendance, which he failed to do; and I can find therefore no reason to interfere, and accordingly confirm the moonsiff's decision and dismiss the appeal.

THE 27TH APRIL 1848.

No. 416 of 1847.

Appeal from the decision of Mr. Finney, Moonsiff of Second Town Division, dated 7th July 1847.

Hyder Ally, (Plaintiff,) Appellant,

versus

Musst. Bissesoree and others, (Defendants,) Respondents.

THIS was an action to reverse a lease, alleged to have been forcibly taken from the appellant.

The moonsiff, considering force not proved, dismissed the claim; and from this decision an appeal was lodged.

To-day, however, both parties' vukeels filed a soolehnamch, in which it is stated that the appellant shall hold his talook, formerly called Chumroo Saduk Ally, now called Hyder Ally, and consisting of 8 m., 7 k., 19 g., 1 k., at an annual rent of rupees 150. It is further declared that the respondent has received the whole of the rents for the year 1207 and 1208, and the sum of rupees 47-6-1 for the year 1209; and that neither party has any claim against the other for the costs of suit. I therefore reverse the moonsiff's decision, and decree that the appellant shall hold his talook upon the terms agreed upon by them in their soolehnamah.

THE 27TH APRIL 1848.

No. 438 of 1847.

Appeal from the decision of Mr. R. Finney, Moonsiff of Second Town Division, dated 16th July 1847.

Hyder Ally Serang, (Defendant,) Appellant,

versus

Musst. Bissesoree, (Plaintiff,) Respondent.

THE respondent brought an action for rent; and the moonsiff decreed the sum of rupees 36-9-10, with interest and costs.

To-day in the presence of the vukeels of both parties a sooleh-namah was filed, in which it is stated that having entered into an amicable arrangement in No. 416, the respondent declares herself to have received the amount decreed against the appellant; the costs of suit being payable by both parties. I therefore modify the moonsiff's decision, and decree that the appellant shall pay rent for the future agreeably to the conditions of the soolehnameh filed in No. 416, as recited in that number.

PRESENT: W. J. H. MONEY, Esq., ADDITIONAL JUDGE.

THE 3D APRIL 1848.

No. 316 of 1847.

*Appeal from the decision of Mr. Snell, Moonsiff of Deeang,
dated 15th May 1847.*

Shumsheer Alli Choudree, (Defendant,) Appellant,

versus

Hydur Alli, (Plaintiff,) and Baker Alli, Mobarruk Alli, Dewan Alli, Sona Gazee, and Hassun Alli, (Defendants,) Respondents.

THE plaintiff sued for possession of 2 canes 10 gundahs of land, being a portion of 7 canes 10 gundahs which he had purchased from Hassun Alli, talookdar, in the year 1203 M. S. Hassun Alli admitted that there had been some conversation regarding the purchase of the land alluded to for the sum of 58 rupees, but he had in fact only received 10 rupees from the plaintiff.

Shumsheer Alli claimed the land by virtue of his purchase from Hassun Alli in the year 1195 M. S. The moonsiff, merely from the fact of the deputy collector having found the plaintiff in possession in the year 1842, decreed in his favor. The claimants, however, should have been called upon for documentary evidence in support of their alleged purchase from Hassun Alli, and this omission renders the case incomplete. The appeal is therefore decreed, the moonsiff's order reversed, and the case returned for re-trial; and the moonsiff, after proceeding as above directed, will decide the case upon its merits. The amount of stamp paper on which the appeal is engrossed will be refunded to the appellant.

THE 3D APRIL 1848.

No. 314 of 1847.

*Appeal from the decision of Mahomed Afzul, Moonsiff of Satka-
veeah, dated 18th May 1847.*

Wullge Mahomed, (Defendant,) Appellant,

versus

Mahomed Sauchee and Mahomed Alli, (Plaintiffs,) Respondents.

THE plaintiffs sued for possession of a plantation of "gurjun" trees, and to recover the value of sixty trees which had been improperly disposed of by the defendant. Wullge Mahomed resisted the claim, on the strength of a decree which he had himself obtained some years ago. The moonsiff, considering the fact of possession on the part of the plaintiffs and their ancestors fully substan-

tiated, decreed in their favor, without awarding the value of the trees. As the decree alluded to by the appellant does not appear to have any connection with the particular plantation in dispute, of which the respondents have been in possession for a very considerable time, I confirm the moonsiff's order, and dismiss the appeal with costs.

THE 4TH APRIL 1848.

No. 327 of 1847.

Appeal from the decision of Mr. Snell, Moonsiff of Deeanj, dated 22d May 1847.

Fouzdarreea, (Defendant,) Appellant,

versus

Musst. Sooburna, (Plaintiff,) and Ramjye, Budeen, and Becharam, (Defendants,) Respondents.

THE plaintiff sued to recover the sum of 30 rupees advanced by her husband upon a mortgage of 2 canes 15 gundahs of land granted by the defendant, Fouzdarreea, and his father, Ram Hurree, but of which full possession was never accorded. The defendant, Fouzdarreea, declared that although the deed of mortgage was drawn out for the sum of 30 rupees, yet 15 rupees only had been advanced; he added further, that, after deducting the sum of 5 rupees 8 annas, the amount collected from the land in the year 1206 M. S., the plaintiff had agreed to receive 12 rupees, which had been paid accordingly, but the deed of mortgage had not been released. The moonsiff, discrediting the payment alluded to by the defendant and considering that 15 rupees had only been advanced by the plaintiff's husband in the first instance, decreed that amount in her favor. After perusal of the papers, I see no reason to disturb this order, which is hereby confirmed and the appeal dismissed with costs.

THE 4TH APRIL 1848.

No. 353 of 1847.

Appeal from the decision of Mr. Hutchinson, Moonsiff of Putteea, dated 4th June 1847.

Mahomed Alli, (Plaintiff,) Appellant,

versus

Khoosha Bebee, Sufur Alli, Muttoobshah, and Rumzan Alli, (Defendants,) Respondents.

THE plaintiff sued to compel the defendants to ratify a marriage contract. This case was remanded on the 11th March 1847 to the moonsiff, who was directed to ascertain from the law officer

whether under the circumstances elicited in this suit it was obligatory on the defendant, Sufur Ali, to give his daughter in marriage to the plaintiff. The law officer has explained that after formal consent given for the marriage of a female under age the contract must be ratified; and the moonsiff, considering that as the plaintiff was not legally united to Khoosha Bebee he could not claim her as his wife, dismissed the case, which is again appealed to this court. I do not concur with the moonsiff in his reason for dismissing the case; but as the law officer's application of the law refers to females under age, and there being great reason to doubt whether "Khoosha Bebee" was under age at the time the consent was said to have been given, and with reference to her present extreme reluctance to accept the appellant on any terms, I am inclined to dismiss the appeal and confirm the moonsiff's order.

THE 5TH APRIL 1848.

No. 329 of 1847.

Appeal from the decision of Mahomed Afzul, Moonsiff of Satkaneeah, dated 14th May 1847.

Sheikh Mahomed Budul and Kureem Bux, (Defendants,)

Appellants,

versus

Baker Alli, Jan Alli, Hussun Alli, Hyder Alli, and Kureem Alli,
(Plaintiffs,) and Abdool, (Defendant,) Respondent.

THE plaintiffs sued to cancel a summary order of the deputy collector, under which they were directed to pay rent to Mahomed Budul and Kureem Bux, with whom they had no sort of connection. Mahomed Budul and Kureem Bux, on the other hand, declared that 6 canes 10 gundahs of land were cultivated by the plaintiffs; that notice had been issued upon them for the payment of their rent, and they were at length obliged to resort to a summary suit under Regulation VI. 1799. They referred to a former decree of a ~~sudder~~ ameen, which had been upheld in appeal by the judge, in support of their declaration as to the plaintiffs' cultivating the land alluded to by the deputy collector in his summary decree. As there was no proof of the liability of the plaintiffs for the payment of rent to Mahomed Budul and Kureem Bux, the moonsiff decreed in their favor, and cancelled the summary order of the deputy collector. The copy of the decree of the civil court filed by the appellants is dated the 22d May 1823, and refers to a case in which the former talookdar, Runjeetram,

sued successfully the respondent for rent; but there is nothing to show their liability for the payment of rent to the appellants. Under these circumstances, I confirm the moonsiff's order and dismiss the appeal with costs.

THE 5TH APRIL 1848.

No. 330 of 1847.

Appeal from the decision of Mr. Hutchinson, Moonsiff of Putteeah, dated 25th May 1847.

Ramkunto Ghose, (Defendant,) Appellant,

versus

Kishen Ghose, (Plaintiff,) Respondent.

THE plaintiff sued to recover certain articles of property, consisting of two brass pitchers and a hatchet, which he had placed under the charge of the defendants, Ramkunto and his mother, Sooburna, who now refused to deliver them up. The defendants denied the statement; and pleaded an *alibi* on the date these articles were said to have been placed in their charge. As the plaintiff's statement was fully substantiated by respectable persons who lived in the same compound, as regarded the delivery of the pitchers, the moonsiff decreed in his favor accordingly; and I see no reason to disturb the order, which is confirmed and the appeal dismissed with costs.

THE 5TH APRIL 1848.

No. 332 of 1847.

Appeal from the decision of Mahomed Afzul, Moonsiff of Satkaneah, dated 20th May 1847.

Ramsunker, (Defendant,) Appellant,

versus

Pela Ram, (Plaintiff,) Respondent.

THE plaintiff sued to recover the sum of 20 rupees, borrowed by the defendant without any written acknowledgment. The debt was denied by the defendant, Ramsunker, who attempted to shew that the plaintiff was indebted to him.

As the loan, however, was distinctly proved, and had, indeed, been acknowledged before arbitrators in the village, the moonsiff very properly decreed the amount claimed by the plaintiff. The appeal is therefore dismissed and the moonsiff's order confirmed.

THE 6TH APRIL 1848.

No. 434 of 1847.

Appeal from the decision of Syud Ahmud, Additional Moonsiff of Deeang, dated 9th July 1847.

Sada Ram, (Defendant,) Appellant,

versus

Maghun, Caleechurn and Ghunessam, (Plaintiffs,) and Lall Chand, Petumber, Ramguttee, Bux Alli, Ramlochun, Sheebchurn, Turahee Ram and Rammanick, (Defendants,) Respondents.

THE plaintiffs sued to cancel a summary order of the deputy collector under which they were made liable for the payment of rent to Sada Ram, with whom they had no sort of connection.

Sada Ram replied that he had purchased the etmamee lease of Dyaram, consisting of 2 canees, 10 gundahs of land, which he had settled with the plaintiffs at a rent of 5 rupees per annum; but, in consequence of their default, he was obliged to resort to Regulation VII. 1799 for the realization of his rent. As Sada Ram however, though allowed abundance of time, failed to shew that he was entitled to demand rent from the plaintiffs, the moonsiff decreed in their favor, and cancelled the summary order of the deputy collector. After a perusal of the papers, I see no reason to disturb the decision of the moonsiff, which is hereby confirmed and the appeal dismissed with costs.

THE 17TH APRIL 1848.

No. 402 of 1847.

Appeal from the decision of Mr. Snell, Moonsiff of Deeang, dated 17th June 1847.

Doorgachurn, (Defendant,) Appellant,

versus

Maghun Dass, (Plaintiff,) Respondent.

THE plaintiff sued to recover a deed of sale for 10 canees, 12 gundahs, 1 cowrie of land, which were sold for arrears of revenue on the 31st July 1841, and purchased by the defendant, Doorgachurn for 11 rupees. He represented that after the confirmation of the sale, Doorgachurn had not the means of paying up the purchase money, and, therefore, he gave him the necessary amount, namely, 11 rupees, in the presence of witnesses, and obtained an unconditional transfer of the land to himself; and, after receiving the usual certificate of sale from Doorgachurn, he made arrangements with the cultivators for the payment of the rent. As he could not obtain the deed of sale from Doorgachurn, he was

compelled to institute the present suit. Doorgachurn resisted the claim, and replied that he had purchased the land on his own account; and, in consequence of his not being able to pay attention to the collection of the rents, had appointed the plaintiff to manage these matters for him.

The moonsiff considered the plaintiff's claim strengthened from the circumstance of his having the certificate of sale in his possession; and argued that if the defendant had merely appointed the plaintiff a manager, he would have taken some acknowledgment from him to that effect, and could not understand why he committed the management of his land to a stranger rather than to his relations. Upon these grounds, the moonsiff decreed in the plaintiff's favor. The respondent (plaintiff) was not a stranger to the appellant as noticed by the moonsiff, but a relation as admitted by the respondent himself; and the only evidence in support of his claim to the land is that of witnesses. It is extremely improbable, however, that if he had really purchased the land, he would have rested satisfied for a period of five years, without demanding the deed which was necessary to ensure the validity of his purchase; for, by his own account, the sale was said to have been effected on the 30th Sawan 1203 M. S., and the first demand he makes for this deed is in the year 1208 M. S. It is clear from a receipt for rent granted by the Government farmer in the year 1845, corresponding with the year 1207 M. S., that the appellant was considered the proprietor of the land; and neither here, nor in the four following cases which are connected with this suit, has the respondent been able to shew, from the arrangement he made with the cultivators, the slightest symptoms of proprietary right. Under these circumstances, I consider his claim altogether groundless and decree the appeal, and reverse the moonsiff's order. The respondent will pay the costs of both courts.

THE 17TH APRIL 1848.

No. 400 of 1847.

Appeal from the decision of Mr. Snell, Moonsiff of Deeang, dated 17th June 1847.

Doorgachurn, (Defendant,) Appellant,

versus

Bodhoo, (Plaintiff,) and Maghun Dass, (Defendant,) Respondents.

THE plaintiff sued to recover rent illegally exacted by Doorgachurn for land, the settlement of which he had arranged with Maghun Dass, and gained a decree from the moonsiff. This case is connected with the previous case, No. 402, just decided, where the land alluded to has been decided to belong to the appellant.

This appeal, therefore, must be decreed and the moonsiff's order amended, and Maghun Dass, respondent, must be responsible for the rent which he exacted from the plaintiff, and will pay the costs of both courts.

THE 17TH APRIL 1848.

No. 401 of 1847.

*Appeal from the decision of Mr. Snell, Moonsiff of Deeang,
dated 17th June 1847.*

Doorgachurn, (Plaintiff,) Appellant,
versus

Aman Alli and Maghun Dass, (Defendants,) Respondents.

THE plaintiff sued to recover rent illegally exacted by the appellant, and gained a decree from the moonsiff. This case is also connected with case No. 402; the appeal is therefore decreed, and the moonsiff's order amended.

THE 17TH APRIL 1848.

No. 403 of 1847.

*Appeal from the decision of Mr. Snell, Moonsiff of Decung,
dated 17th June 1847.*

Doorgachurn, (Defendant,) Appellant,
versus

Shamut Alli, (Plaintiff,) and Maghun Dass, (Defendant,) Respondents.

THIS suit was instituted by the plaintiff to recover rent illegally exacted by the appellant. This case is also connected with case No. 402, and the same order is applicable.

THE 17TH APRIL 1848.

No. 404 of 1847.

*Appeal from the decision of Mr. Snell, Moonsiff of Deeang,
dated 17th June 1847.*

Doorgachurn, (Defendant,) Appellant,
versus

Kumer Alli, (Plaintiff,) and Maghun Dass, (Defendant,) Respondents.

THIS suit was instituted by the plaintiff to recover rent illegally exacted by the appellant. This case is also connected with case No. 402, and the same order is applicable.

THE 18TH APRIL 1848.

No. 438 of 1847.

*Appeal from the decision of Mr. Snell, Moonsiff of Deeang, dated 9th July 1847.*Oomur Sha and Abdool Kureem, (Defendants,) Appellants,
versus

Mohomed Dasse, (Plaintiff,) Respondent.

THE plaintiff sued for possession of 3 canees, 7 gundahs, 2 cowries of land, with mesne profits. He represented that he had purchased for 73 rupees, 4 canees, 16 gundahs, 1 cowrie, 2 krants of land, which were sold in execution of a decree of court, and had been put in possession by the ameen of the civil court; but the defendants would neither make any settlement, nor give up the land. As the deputy collector at the time of his testing the measurement, had recorded 3 canees, 7 gundahs, 2 cowries of land to be noabad, and 1 canee 9 gundahs rent-free, he had reserved the latter for a separate action, and preferred the present suit for the former description of land. The defendants gave no reply; but, after the investigation had proceeded to some length, they presented a petition, in which they merely contented themselves with denying the plaintiff's claim.

As the land in question was distinctly proved to be in the cultivation of the appellants, the moonsiff decreed in the plaintiff's favor. After a perusal of the papers, I see no reason to disturb this decision, which is hereby confirmed and the appeal dismissed with costs.

THE 19TH APRIL 1848.

No. 440 of 1847.

Appeal from the decision of Mr. Hutchinson, Moonsiff of Putteah.

Khyrollah, (Defendant,) Appellant,

versus

Khondkar Ahsunoolla, (Plaintiff,) Respondent.

THE plaintiff sued to recover the sum of 5 rupees and certain books which he had deposited with the defendant. The demand was resisted by the defendant, who declared that the money and the books were given over to him in payment of a debt due from Musst. Latoor Bebee, the plaintiff's foster mother. As no evidence was adduced on this point, and the plaintiff's statement was fully substantiated, the moonsiff decreed in his favor. After a perusal of the papers, I see no reason to disturb this order, which is hereby confirmed and the appeal dismissed with costs.

THE 19TH APRIL 1848.

No. 441 of 1847.

*Appeal from the decision of Mr. Hutchinson, Moonsiff of Putteah,
dated 10th July 1847.*

Ram Dass, (Plaintiff,) Appellant,

versus

Tona Ram Hujam, Ramlochun, Shurun, Hureechurn, and
Rammanick, (Defendants,) Respondents.

THE plaintiff sued to recover the sum of 9 rupees, 3 annas which the defendant, Ramlochun, one of his partners in trade, had surreptitiously taken and expended, and which he had engaged to repay through Tona Ram who became his security.

Ramlochun gave no reply in the case. Tona Ram alluded to a dispute which had occurred between the plaintiff and his partners about the money which he had lost, and declared that the matter was twice referred to arbitration, the result of which was unfavorable to the plaintiff. The moonsiff considered that as there had been a compromise of a theft, the case was not cognizable in the civil court under Construction No. 318 of the Court of, Nizamut Adawlut; and consequently dismissed the claim without much investigation. It does not appear that the plaintiff ever charged the defendant, Ramlochun, with theft, and therefore the construction alluded to by the moonsiff does not apply to this case. The appeal is decreed, the moonsiff's order reversed, and the case returned for retrial; and the moonsiff, after calling upon Tona Ram for evidence in support of the arbitration alluded to in his defence, and examining the remaining witnesses named by the appellant, will decide the case upon its merits. The amount of stamp paper on which the appeal is engrossed, will be refunded to the appellant.

THE 24TH APRIL 1848.

No. 137 of 1847.

*Appeal from the decision of Mahomed Afzul, Moonsiff of Salkaneah,
dated 23d February 1847.*

— Shakeer Alli, (Defendant,) Appellant,

versus

Mahomed Nusseem, (Plaintiff,) Respondent.

THE plaintiff sued to cancel the proceeding of the deputy collector and additional collector, regarding a tank comprising 2 canees, 11 gundahs, 2 cowries of land. He represented that he purchased from Soa Gazee, by a deed of sale, dated the 15th Phagoon 1199 M. S., 1 droon, 13 gundahs, 2 cowries of land, including

the tank in question, which at the recent measurement was recorded in the possession of Soa Gazee; but he complains of the subsequent arrangement by which the tank was declared to be the joint property of himself and the defendant.

The collector gave no reply in the case. Shakeer Alli replied that his father, Mahomed Hossein, was appointed a talookdar by Jooraour Sing Hazaree on the 17th Sawun 1171 M. S., for 3 droons, 3 canees of land; half of which Munnoo Fukeer, the father of Soa Gazee and Zuooddeen, took from his father, and they have been all along in possession, both of the land and the tank in question, as joint undivided property. He alleged that Soa Gazee had caused his own name to be recorded at the recent measurement without his knowledge, but subsequently upon his representation the error was corrected, and their names were jointly recorded. The moonsiff being of opinion that Shakeer Alli and his father, Mahomed Hossein, had no proprietary right to the tank, cancelled the proceedings of the deputy collector and additional collector. As the respondent (plaintiff) has failed to shew that Soa Gazee, the seller of the land, had any exclusive right to the tank, his own claim of course falls to the ground. I decree this appeal, reverse the moonsiff's order, and confirm the proceedings of the deputy collector and additional collector, dated the 19th January and 19th March 1844, respectively. The respondent will pay the costs of both courts.

THE 24TH APRIL 1848.

No. 275 of 1847.

**Appeal from the decision of Mahomed Afzul, Moonsiff of Sathaneeah, dated 27th April 1847.*

The Collector of Chittagong, (Defendant,) Appellant,

versus

Musst. Bipola, (Plaintiff,) Respondent.

THE plaintiff sued to cancel the sale of 2 camees, 1 gundah, 3 cowries of land, which had been sold for arrears of revenue without any settlement having been effected with them. Mahomed Ashruff, the auction purchaser, acknowledged having purchased the land. The collector replied that the land had been resumed under Regulation II. 1819, and settled, and ultimately sold for arrears of revenue. The plaintiff further declared in a petition that all settlements under Regulation IX. 1825, had been cancelled, and denied the fact of the land having been resumed under Regulation II. 1819, and complained, moreover, of the sale having taken place without previous notice. The moonsiff considered that, as no

settlement of the land had been concluded under Regulation II. 1819, the sale was illegal, and cancelled it accordingly. Against this decision the collector has appealed, and urged that objections to the sale, omitted to be preferred to the commissioner in appeal, should not be admitted in the civil court. It appears that when the respondent (plaintiff) appealed to the commissioner against the sale, his only ground of objection was with reference to the non-existence of a balance. By Section 24, Act I. 1845, therefore, the sale cannot be upset. The appeal is decreed, the moonsiff's order reversed, and sale confirmed. The usual order regarding costs.

THE 24TH APRIL 1848.

No. 282 of 1847.

Appeal from the decision of Mahomed Afzul, Moonsiff of Satkaneah, dated 27th April 1847.

Mahomed Ashruff, (Defendant,) Appellant,

versus

Jaffer Alli and Musst. Bipola, (Plaintiffs,) Respondents.

THIS appeal was instituted by the auction purchaser, and is precisely similar to the preceding case. The same order is therefore applicable.

ZILLAH CUTTACK.

PRESENT : E. DEEDES, Esq., JUDGE.

THE 5TH APRIL 1848.

Case No. 6 of 1847.

Appeal from the decision of Moulvee Mahomud Farookh, Sudder Ameen of Balasore, passed on the 29th June 1847.

Bishonauth Sennaputtee, Judisthee Persaud Das, and Cassinath Das, (Defendants,) Appellants,

versus

Muddun Mohun Pundah, (Plaintiff,) Respondent.

THIS action is brought by plaintiff for 400 rupees principal, and 33 rupees, 7 annas, 5 pie, interest, total 433 rupees, 7 annas, 5 pie, due on a bond executed by defendants, Bishonauth Sennaputtee, Ramhurry, Bunmalee, Gopeenauth, and Nundkishore Misser, Chowdhree Judisthee Persaud Das, and Cassinath Das on the 10th Assin 1253. Two of the defendants, Nundkishore and Bunmalee Misser, acknowledge the claim of plaintiff to be correct. No answer is put in by Ramhurry and Gopeenauth Misser, defendants. The remaining defendants in their reply acknowledge having borrowed the money from plaintiff, but state that they pledged to him 16 golas of opium for the debt under a receipt dated 5th Bysack 1253, and besides this paid to him in part payment of the bond, 109 rupees, 2 annas. Plaintiff, in rejoinder, denies the statements of defendants. The sudder ameen of Balasore, releasing Ramhurry Misser, one of the defendants, from the claim brought against him, decreed the suit in plaintiff's favor against the remaining defendants, because he did not consider the pleas advanced by them, the receipt or witnesses thereto, as deserving of credit. Bishonauth Sennaputtee, Chowdhree Judisthee Persaud Das, and Cassinath Das, three of the defendants, preferred

this appeal. On consideration of the proceedings, I am of opinion that the pleas urged by defendants are, for several reasons, incorrect and untenable. First, because although the receipt dated 5th Bysack 1253 has been produced by the defendants, and witnesses examined thereto, yet the defendants in their answer did not mention either the date, month, or year thereof; and it does not appear that the defendants, previous to pledging the opium to plaintiff, either informed the collector thereof, or obtained his permission to do so; and it is not probable that the defendants would pledge opium, which is an article of great value, to plaintiff, without permission of the collector, or that plaintiff would take such an article in pledge, because if it became known both parties would under the regulations be liable to punishment. Secondly, defendants assert that arbitrators were appointed to settle the matter, and witnesses were examined to this point; but it appears that the arbitrators did not, in accordance with the regulations, take an ikrarnama or agreement from the parties, neither did they pass any decision in the case. The assertion of defendants therefore, that the case was settled by arbitration, is not to be credited. Thirdly, the bond executed by defendants was duly registered: no property being pledged therein, it is not therefore probable, that, within a few days therefrom, the opium should have been pledged to plaintiff without the receipt being registered, and defendants have no documentary proof of the payment to plaintiff of 109 rupees 2 annas; the evidence of witnesses is alone not sufficient to establish such payment. Fourthly, the sudder ameen acted irregularly in releasing one of the defendants, Ramhurry Misser, in conformity to the wish expressed by defendants, Nundkishore and Bunmalee Misser, in their reply; but it appears that defendants (appellants,) in their appeal, have not included Ramhurry Misser amongst the respondents: therefore, under the Court's circular letter dated 1st July 1842, extended to the local appellate courts by their circular bearing date 13th April 1847, the order of the sudder ameen cannot be interfered with. The decision of the lower court being therefore, in my opinion, correct and proper,

IT IS ORDERED,

That the appeal be dismissed and the decision of the sudder ameen be confirmed; but his decree must be modified in respect to the vakeel's fees, which have been twice charged to the defendants, *i. e.* after deducting from 579 rupees, 10 annas, 9 pie, the amount decreed, the sum of 21 rupees, 10 annas, 9 pie, the fees of plaintiff's second vakeel, the balance 558 rupees, with interest to day of payment, plaintiff will receive from all the defendants with the exception of Ramhurry Misser. The costs of appeal are payable by appellants.

THE 6TH APRIL 1848.

Case No. 83 of 1847.

*Appeal from the decision of Benninath Bose, former Moonsiff of
Cuttack, passed on the 21st July 1847.*

Mrs. C. E. Atkinson, for self and children, (Plaintiff,) Appellant,
versus

Mr. L. DeTores, (Defendant,) Respondent.

THIS action was brought by the plaintiff's husband against the respondent for 121 rupees, 10 annas, 1 pie, 12 krants, principal and interest, due under the following circumstances. He states that he borrowed from Kunnyah Lall Pundit 2,500 rupees on 11th Bysack 1250, and remitted 100 rupees in part payment to respondent to be paid to his creditor, and obtained from him a receipt dated 20th October 1843, notwithstanding which Kunnyah Lall Pundit, without deducting the 100 rupees, sued appellant's husband for the entire sum due under the bond and obtained a decree for the same; he therefore preferred this suit for the amount, principal and interest, as abovementioned.

Plaintiff having deceased, appellant, his wife, is established as heir in her husband's place.

Respondent acknowledges in reply having received the 100 rupees from appellant's husband; but says that he paid it to Kunnyah Lall Pundit. The former acting moonsiff of Cuttack, Sreeram Soam, on the 17th December 1846, dismissed the suit, because Kunnyah Lall Pundit had presented a petition to the effect that he had received from respondent the 100 rupees sent to him by appellant's husband, and because appellant's husband in the suit brought against him by Kunnyah Lall Pundit had acknowledged the amount to be due by him, and had not in reply to the action pleaded the payment of the 100 rupees. The former judge, on the 31st March 1847, deeming the grounds stated by the moonsiff for dismissing the suit to be insufficient, and that the petition of Kunnyah Lall Pundit was of no effect as it could not be considered evidence, and because it was necessary that both parties should be called upon for proof on their respective pleas, sent back the suit for further enquiry. Benninath Bose, the late moonsiff of Cuttack, on the 21st July 1847, dismissed the suit, because he considered the pleas of respondent established by the evidence adduced by him, and on the strength of the petition of Kunnyah Lall Pundit which was considered by the former judge not to be evidence. Appellant prefers this appeal. After due consideration of the proceedings, I am of opinion that the claim of appellant is correct, and the decree of the lower court must be reversed, because respondent acknowledges having received 100 rupees from appellant's husband on account of the debt due to Kunnyah Lall: therefore, unless he

can prove from documents, or the evidence of Kunnyah Lall Pundit taken on oath, that he has paid the 100 rupees to him, his pleas in this respect cannot be approved of by the court. The evidence of two witnesses alone, without documentary proof, is not sufficient in proof of the plea urged; and to-day on questioning respondent's vakeel, he stated that he could not cause the attendance of Kunnyah Lall Pundit to give evidence in the suit, and he wished it to be decided on the evidence already given: therefore, on the grounds abovementioned, the appeal is decreed and the decree of the moonsiff reversed, and respondent will pay to appellant the amount sued for, with interest on the principal from date of suit to this day, and costs of suit in both courts, with interest on the entire sum from this day to date of payment.

THE 6TH APRIL 1848.

Case No. 103 of 1847.

Appeal from the decision of Mahomed Arshud, Moonsiff of Kendraparah, passed on the 5th October 1847.

Daybudee Sahoo, (Defendant,) Appellant,

versus

Bheekaree Behra, (Plaintiff,) Respondent.

THIS suit was instituted by respondent for 3 rupees, 8 annas, 3 pie, principal and interest, rent due for the years 1252 and 1253, on 15 goonths of confirmed rent-free land in the cultivation of appellant, situated in Rukba Dewan Putna, mouzah Bhuratpoor, pergunnah Nakund, under a kubooleut executed by him bearing date 15th Jhait 1251. Daybudee Sahoo, appellant, denies the claim of respondent and the execution of the kubooleut, and says the land abovementioned is the dewuttur land of Ragonath Jee Takoor, through Baloram Roy, the servant thereof, to whom he pays rent.

Pursooram Roy, the brother of Baloram, presents a petition in opposition to respondent's claim, to the same effect as that of appellant. The moonsiff of Kendraparah decreed the claim, as he considered the kubooleut proved by the evidence brought in attestation thereof, and because respondent's name was mentioned in the Government measurement papers, and because the claimant had not adduced proof in respect to his possession of the land abovementioned. Appellant in this suit, and claimant in appeal No. 106, prefer separate appeals. On consideration of the proceedings in this suit, it appears that the point for enquiry is, whether in fact respondent, or claimant, held possession of the land in dispute in 1252 and 1253; and from the kubooleut produced by respondent and the witnesses adduced thereto, the possession of respondent, through the appellant, as cultivator of the land, is satisfactorily

established. As this is the case, the mere denial of the appellant is no sufficient proof of his statement. It appears, moreover, that respondent's name is mentioned in the measurement papers. Although the claimant, in proof of his right to the land, has produced a decision of the deputy collector passed on the 27th November 1844, in confirmation of his rent-free grant and a proof of his possession, yet the possession of claimant on the land abovementioned in 1252 and 1253, is not clear from that decree; besides this, no other proof of possession has been brought forward by the claimant. On the above grounds, the appeal is dismissed and the decision of the lower court affirmed, with costs of appeal payable by appellant.

THE 6TH APRIL 1848.

Case No. 106 of 1847.

Appeal from the decision of Mahomed Arshud, Moonsiff of Kendraparah, passed on the 5th October 1847.

Pursooram Roy, (Claimant,) Appellant,

versus

Bhikaree Behra, (Plaintiff,) Respondent; and Dayadee Sahoo, (Defendant,) Respondent.

SINCE suit No. 103 and this suit were taken up in appeal together, and the grounds stated in that decree for considering the pleas urged by appellant to be undeserving of credit are sufficient in this suit also.

IT IS THEREFORE ORDERED,

That the appeal be dismissed and the decision of the moonsiff be affirmed. The costs of appeal are payable by appellant.

THE 13TH APRIL 1848.

Case No. 22 of 1847.

Appeal from the decision of Moonshee Ghurriboollah, Moonsiff of Dhumnagur, passed on the 19th January 1847.

Blaugbut Jenna, (Defendant,) Appellant,

versus

Panoo Das, on his death Musummut Lukhmee his wife, (Plaintiff,) Respondent.

THIS action is brought by respondent against the defendants, appellants, for possession in and right to several idols belonging to Roghoonauth Jee Thakoor, together with the appendages thereto: the claim being laid at 60 rupees. Respondent states the idols

to be his property, from which the appellant dispossessed him, together with the land appertaining thereto, at the time of hoolee jattrah.

Byragee Jenna, defendant, in reply, states the idols in dispute to be the purchased property of his ancestor. Respondent has no right in them, or the land belonging thereto, further than being employed by appellants in the performance of worship. Defendant, Bhaugbut Jenna, replies to the same effect. The moonsiff of Dhumnagur, on proof of the claim, passed judgment in respondent's favor.

Bhaugbut Jenna, one of the defendants, (appellant,) preferred this appeal; but, on consideration of the proceedings, I am of opinion that from the documents produced by respondent and the evidence of his witnesses, the possession for many years of his ancestors, and afterwards of himself, is satisfactorily proved, and also that the defendants, (appellants) took possession of the idols at the time of the hoolee festivals; and that defendants (appellants) have not established by documents, or other satisfactory proof, that the idols are their property under purchase of their ancestors, or that they were ever in possession thereof, or of the land appertaining thereto; neither is it proved that respondent, or his ancestor, were appointed Goojarees by appellants (defendants,) or their ancestors. Under the above circumstances, the appeal is dismissed and the decree of the lower court affirmed. Appellant is to pay the costs of appeal.

THE 19TH APRIL 1848.

Case No. 64 of 1847.

• *Appeal from a decision of Moonshee Ghurriboollah, Moonsiff of Dhumnagur, passed on the 10th June 1847.*

Gunesham Maintee, (Defendant,) Appellant,

versus

Basoodeb Dass, guardian and father of Sreekishen Das, a minor, (Plaintiff,) Respondent.

THIS action is brought by plaintiff against the defendant, for right and possession, and mutation of names on 12 annas of the zemindaree mouzah Binjaurpoor, pergunnah Ayas, under a deed of sale executed by defendant, Suboodra Dey, on 21st November 1845, in favor of Sreekishen Das, the minor son of plaintiff; and to set aside a kubala in favor of Gunesham Maintee, defendant, bearing date 27th Assin 1253, or 11th October 1845: the action being laid at the sudder jumma of the zemindaree, 50 rupees, 10 annas, 1 pie, 10 krants.

Defendant, Soobudra Dey, in reply, acknowledges the execution of both deeds of sale, but says, she did not get the amount

purchase money from plaintiff and at his request ; for the purpose of reversing the deed of sale in defendant's favor, the deed of sale in plaintiff's name was executed. Gunesham Maintee, defendant, answers to the same effect as Soobudra Dey. The moonsiff of Dhumnaggur being of opinion that the deed of sale in the name of plaintiff was correct, and the kubala in favor of defendant, Gunesham Maintee, was false and fraudulent, passed judgment accordingly. Gunesham Maintee, one of the defendants, preferred this appeal. From the proceedings in this suit, it appears that the point for enquiry, is, whether the deed of sale of plaintiff, or of defendant, Gunesham Maintee, is true ; and whether plaintiff, or defendant, have been in possession of the land under dispute from the date of their respective deeds. In my opinion, from the evidence adduced and the acknowledgment of Soobudra Day, the deed of sale in plaintiff's favor is satisfactorily established ; and although the deed in favor of Gunesham Maintee, defendant, has been registered and evidence has been adduced in proof thereof, and Soobudra Dey acknowledges the execution of the deed and the receipt of the purchase money, yet, for several reasons, there is strong suspicion for supposing that, after the execution of the deed in plaintiff's favor, the deed of sale in the name of Gunesham Maintee, a previous date being inserted therein, was executed with the intention of rendering plaintiff's deed of sale of no effect.

First, because the mookhtearnamahs executed by Suboodra Dey, the principal defendant, for the purpose of registering plaintiff's deed of sale and causing a mutation of names, were attested on the 24th November 1845, in the court of the moonsiff of Dhumnaggur, by Suboodra Dey herself, and not the slightest suspicion attaches thereto ; but, with reference to the mookhtearnamah executed by Suboodra Dey, for the purpose of registering the deed of sale to Gunesham Maintee, which was attested in the court of the deputy collector of Balasore on the 18th October 1845, on inspection of the daily book of that officer's court there is strong suspicion that the mookhtearnamah was not attested on that date, but that, through the fraud of some one, on a certain date after the attestation of plaintiff's mookhtearnamah, a previous date being inserted, viz. the 18th October 1845, and in collusion with some of the omlah of the deputy collector's court it was attested by "that officer ; because the paper on which the mookhtearnamah is attested does not correspond with other paper in the book, and there are erasures in some of the numbers of the pages thereof. Moreover, if the mookhtearnamah had been attested on the 18th October 1845, it is most probable that the deed would have been registered within five or six days thereof ; that was not done ; but, four months after, the deed was registered under the same mookhtearnamah. It appears further, on inspection of the registry books, that between the 22d October

1845 and 3d February 1846, the date of registry of the deed of sale of Gunesham Maintee, that several deeds were registered; the statement of the defendant therefore, that the register of deeds was absent at the period of the attestation of the mooktearnamah, cannot be relied upon.

Secondly, from the report of the ameen deputed to make a local enquiry, it appears that ten or eleven witnesses deposed to defendant's possession on the land subsequent to the deed of sale in his favor; but as they are his dependants, and as he previously held a 4 annas' share in the zemindaree, their evidence cannot be relied upon. Moreover, it is evident from the ameen's report that forty witnesses deposed to plaintiff's possession on the land subsequent to the date of the deed of sale in his favor, and their evidence cannot be set aside by that of ten or eleven witnesses examined on the other side.

Thirdly, two receipts for rent paid into the collector's office in 1253, on account of the zemindaree in dispute, have been produced by defendant; but, on the other hand plaintiff has produced 10 receipts for rent paid by him in the collector's office for the same zemindaree and the same year 1253. It is very probable, therefore, as the defendant previously held a 4 annas' share in the zemindaree that the receipts abovementioned were produced by himself and Soobudra Dey, or that defendant paid into the collector's office more than the rent due on his 4 annas' share of the zemindaree, for the purpose of destroying the rights of plaintiff. On the above grounds the decision of the lower court being correct, the appeal is dismissed and the decree of the moonsiff affirmed; and since respondent has appeared without being summoned, each party is to pay his own costs of appeal.

THE 19TH APRIL 1848.

Case No. 84 of 1847.

Appeal from the decision of Mahomed Arshud, Moonsiff of Kendraparah, passed on the 26th July 1847.

Indur Das, (Defendant,) Appellant,

versus

Chuckerdhur Das, (Plaintiff,) Respondent.

THIS action is instituted by respondent against defendant (appellant) for 31 rupees, 1 anna, 2 pie, 8 krants, principal and interest due on a bond executed by him on the 15th Jheit 1253.

This suit was decided *ex parte* by the moonsiff of Kendraparah, who decreed the claim, because in his opinion the bond

had been proved by the evidence adduced thereto. Defendant (appellant) prefers this appeal, and pleads that the notice and proclamation had not been duly served upon him; he further denies having executed the bond or borrowed any money from respondent. On consideration of the evidence adduced in proof of the notice having been duly served upon the appellant, I am of opinion that it cannot be relied upon, because of three witnesses examined thereto two of them are residents of different villages from that in which the appellant resides, and of those two one of them is a witness to the bond also. Under the above circumstances, as it is not in my opinion established that the notice was duly served on the appellant, and as it is clear from the proceedings that no proclamation was issued in his name, appellant is admitted to appeal; and since the bond is not proved, it is unnecessary therefore to return the proceedings for further enquiry, and to take the reply of the appellant (defendant.) On consideration of the evidence of the bond, I am of opinion that the execution of it is not satisfactorily established, because of the two witnesses thereto one of them alone attests it, the other cannot recognize it; moreover neither of them reside in the village which the parties to the bond inhabit, their residences are two and three coss therefrom. Besides this, from the evidence of the above witnesses, it appears that the contents of the bond, together with the signature of the appellant thereto, were written by respondent, which is a cause of much suspicion. On the above grounds, and notwithstanding that the suit was decided *ex parte* by the lower court, the appeal is decreed, the claim of respondent dismissed, and the decree of the moonsiff reversed. The entire costs of suit in both courts, with interest to date of payment, are payable by respondent.

THE 20TH APRIL 1848.

Case No. 86 of 1847.

Appeal from the decision of Moulvee Mahomud Farookh, Moonsiff of Balasore, passed on the 5th August 1847.

Jagjistee Poostee, (Plaintiff,) Appellant,

versus

Fukeer Sahoo, (Defendant,) Respondent.

THIS action is brought by appellant in the name of respondent for right and possession in 8 ghoonts, 2 biswas of ryotee land, situated in mouzah Begumpoor, pergunnah Remna: the suit being laid at rupees 31, 4 annas. He states that 18 ghoonts, 10 biswas of khanabaree land were acquired by his father, Cheitun Poostee, and

5 ghoomts, 2 biswas of land, belonging to Gungaram, were acquired by himself under a pottah from the zemindar dated 11th Jheit 1249, and he was in possession accordingly, and at the time of settlement both parcels of land were measured in his name; but, out of the land abovementioned, the deputy collector on 5th December 1842 gave to respondent a pottah for 8 ghoomts, 2 biswas thereof, by means of which, and an order passed by the deputy magistrate under Act IV. of 1840, he was dispossessed therefrom, and respondent obtained possession.

Defendant (respondent) denies the claim, and replies that he obtained a pottah in 1248 from the zemindar for the land belonging to Gungaram, from which date he has held possession thereon; and at the period of settlement he obtained a pottah from the deputy collector for the same land, and appellant has no right therein. The moonsiff of Balasore dismissed the suit, because he considered it had not been proved. Plaintiff (appellant) prefers this appeal. On consideration of the proceedings, I am of opinion from the pottah produced by appellant, stated to have been executed by the zemindar on the 11th Jheit 1249, and from the evidence of his witnesses that it is proved he obtained a pottah for 5 ghoomts, 2 biswas of land formerly belonging to Gungaram, and from the other papers in the case that he had previously held possession on 18 ghoomts, 10 biswas of hereditary land attached to his house, and that the land under dispute is included in these two portions of land; and from the enquiry on the spot made by the ameen, that it is clearly established that appellant was in possession previous to the date of dispute of the land in question, and that he paid rent to the zemindar. It appears further, that the name of appellant's father is inserted in the measurement papers and the pottah obtained by respondent from the deputy collector; and although respondent and his mother have for several years resided in a house made over to them by appellant's father, yet it is quite clear that they have never held possession of the land under dispute as rightful owners therein, or paid rent to the zemindar; but because respondent's mother was the daughter of appellant's father, and respondent was his grandson and a minor, and not having any one to support them, he gave them a house to reside in and supported them, but on this account neither respondent or his mother have any right in the disputed land. Respondent states that he obtained a pottah from the zemindar for the land in question in 1248, but he has neither produced the pottah, nor any receipt for rent paid on account of this land previous to his obtaining the pottah from the deputy collector; and notwithstanding that respondent was present when the ameen made a local enquiry on the spot, he produced no evidence in support of his claim; neither are the pleas urged by him

established from the evidence adduced on his part in the lower court. Under the above circumstances, the claim of appellant is, in my opinion, correct, and the pottah obtained by respondent from the deputy collector and the order of the deputy magistrate under Act IV. of 1840, passed on 26th January 1846, must be reversed.

IT IS THEREFORE ORDERED,

That the appeal be decreed, and the pottah obtained by the respondent from the deputy collector bearing date 5th December 1842, the order of the deputy magistrate, and the decree of the lower court be reversed; and in the execution of the decree appellant will be put into possession of the land as a thanee ryut, and copies of this decree will be sent to the collector and commissioner of Balasore, in order that appellant's name may be entered in the register as a thanee ryut, and respondent's name be erased therefrom. The entire costs of suit in both courts, with interest to date of payment, are payable by respondent.

THE 26TH APRIL 1848.

Case No. 91 of 1847.

Appeal from the decision of Lukheenarain Roy, Moonsiff of Pooree, passed on the 9th August 1847.

Brijoo Sahoo, (Defendant,) Appellant,

versus

Joogae Jenna, (Plaintiff,) Respondent.

THIS action is brought by respondent against the appellant for 18 rupees, 7 annas, on account of damage to rice crops on 4 beegahs, 12 ghoots, 8 biswas of land situated in mouzah Badulpore, pergunnah Serrai. He states he obtained a pottah for the land in dispute in 1253 from Rugoonauth Pooran Pundah, the proprietor of the land, and cultivated it with paddy in 1254, and the appellant removed the crops by force.

Brijoo Sahoo, appellant, in his reply, states that he has cultivated the land in question for forty years, and in 1254 it was cultivated by him and sown with paddy, and he removed the crop accordingly. The moonsiff of Pooree being of opinion that the claim of respondent had been established passed judgment in his favour. Appellant (defendant) appeals. I am of opinion, after due consideration of the proceedings, that plaintiff (respondent) has not proved his claim, because two witnesses only have given evidence on the part of respondent, and it does not appear from their evidence for what land he has obtained a pottah; and one of the witnesses,

Kunt Misser, states that he has heard respondent cultivated the land, but he cannot state the extent of crops produced or the value of it. Further respondent states that he obtained a pottah from the proprietor of the land for 4 beegahs, 12 ghoonts, 8 biswas of land, which he cultivated with paddy; but witness, Bhagruttee Doss, on the contrary deposed that respondent cultivated 6 beegahs, 12 ghoonts, 8 biswas of land with paddy, of which 5 beegahs were included in his pottah, and for 1 beegah, 12 ghoonts, 8 biswas he held no pottah; and respondent in the criminal court petitioned to get the value of the crop on 6 beegahs, 12 ghoonts, 8 biswas of land. In the civil court, on the contrary, he sues for the value of the crop on 4 beegahs, 12 ghoonts, 8 biswas of land; besides this, the proprietor of the land acknowledges appellant to have held the land in dispute in cultivation for many years. For the above reasons the appeal is decreed, the claim of respondent being dismissed, and the decision of the lower court reversed. Costs of suit in both courts, with interest to date of payment, are payable by respondent.

THE 26TH APRIL 1848.

Case No. 80 of 1847.

Appeal from the decision of Moonshee Ghurriboollah, Moonsiff of Dhumnaggur, passed on the 17th July 1847.

Kuroonee Mahec Dasse, (Plaintiff,) Appellant,

versus

Gopeenauth Dukin Raee, (Defendant,) Respondent.

THIS action is brought by appellant against the respondent for 299 rupees, 12 annas, 1 pie, principal and interest due under a bond executed by him on 15th Sawun 1247, or 28th July 1840.

Defendant (respondent,) in reply, denies having borrowed any money from appellant and the execution of the bond in his favour.

The moonsiff of Dhumnaggur being of opinion that appellant had failed to prove his claim, dismissed the suit. Plaintiff (appellant) prefers this appeal; but, on consideration of the proceedings, I am of opinion that the decision of the lower court is correct and proper, because of three witnesses to the bond one of them is deceased, and the remaining two witnesses cannot recognize the bond; and notwithstanding that Kishenchund Mahapatur, a witness on the part of appellant, deposes that respondent received through him the 200 rupees borrowed from appellant, yet the evidence of one witness alone is not sufficient in recognition of the bond. Besides this, although two other witnesses on the part of appellant, who

state themselves to have been present when the bond was executed, have given evidence in proof of it, yet the bond is not established from their evidence, because they cannot recognize it, neither can they mention the date, month, or year in which it was executed. Moreover, on inspection of the bond, it appears that the stamp paper was purchased on the 24th December 1839, and seven months afterwards, *i. e.* on the 28th July 1840, the bond was executed, which is a cause of strong suspicion; besides this, the purchaser of the stamp paper has no connection with either of the parties, neither is he either party's man of business, but a stranger. For the above reasons the appeal is dismissed, and the decree of the moonsiff affirmed; costs of appeal being payable by appellant.

ZILLAH DINAGEPORE.

PRESENT: JAMES GRANT, Esq., JUDGE.

THE 3D APRIL 1848.

No. 16 of 1847.

Appeal from the decision of Ramnarain Rai, Moonsiff of Puteeram, dated the 11th December 1847.

Nuzzur Moollah, (Defendant,) Appellant,

versus

Moteoollah, (Plaintiff,) Respondent.

CLAIM, rupees 143-15-9, principal and interest, due on a bond for rupees 100, dated the 21st of Assin 1241, The persons sued as the heirs of the borrower were released by the moonsiff, who decreed the case against the surety only. The appellant urges that he was not surety for the borrower on this bond, but on another of later date which was liquidated and returned, and which he has filed. The moonsiff overruled the appellant's plea, on the ground that a witness to the returned bond stated that it was in favor of another man (the name is erased as usual.) From the evidence of other witnesses, it appears that the other man (Nuzur Mahomed,) and the plaintiff were cousins german and lived together, and that the money for the returned bond was paid to the plaintiff. It further appears that the security bond was written on the same sheet of paper with the principal deed, and is therefore inadmissible against the surety by Circular Order of the 27th October 1837. Under the above circumstances I reverse the moonsiff's decision, and decree the appeal with costs.

THE 4TH APRIL 1848.

No. 57 of 1847.

Appeal from the decision of Moolvee Mahataboodeen, Moonsiff of Kulliaunge, dated the 20th January 1848.

Amoolah, (Defendant,) Appellant,

versus

Somin Moollah, (Plaintiff,) Respondent.

CLAIM, rupees 31-11-8, principal and interest, due on a bond for rupees 22, dated the 28th of Bysack 1249. The defendant pleads payment in full by four instalments, viz. 15 rupees, 3 rupees, 2

rupees, and 2 rupees. The moonsiff decreed the principal without interest, the latter being entered at 13 cowries a month per rupee, or 12 rupees, 3 annas per cent. The appellant urges that his witnesses to the first main instalment did not attend when summoned, and that he petitioned the moonsiff in respect to them on the day that the evidence of the others was taken and the case decided. This appears to be the case; and I am of opinion that he is entitled to have the benefit of their evidence. I therefore remand the case for revision.

THE 4TH APRIL 1848.

No. 108 of 1847.

Appeal from the decision of Rowshun Ali, Acting Moonsiff of Putneetullah, dated the 30th February 1847.

Ramgopal Nag and Kassichurn, (Defendants,) Appellants,

versus

Azmut, (Plaintiff,) Respondent.

THIS suit was instituted to set aside a summary decision of the deputy collector of Dinagepore, awarding rupees 38-6, rent, with interest, for 1250. The defendants urge that the plaintiff gave a kubooleut and paid only 2 rupees, and that the summary suit was for the balance due. The moonsiff decreed the case, on the ground that eleven witnesses stated that no land in the place designated was leased to, or cultivated by the plaintiff. It appears, that the moonsiff in the first instance proposed visiting the spot himself; that he afterwards directed the plaintiff to deposit the sum required for an ameen, and that he subsequently disposed of the case without local inquiry by himself or an ameen, and without taking evidence on the part of the defendants. I therefore remand the case for revision.

THE 19TH APRIL 1848.

No. 2 of 1846.

Appeal from the decision of Pundit Nurhoree Seeromonee, Sudder Ameen, dated the 5th of May 1846.

Ramkoomar Moiter, (Plaintiff,) Appellant,

versus

Taramonee Debya, (Defendant,) Respondent.

CLAIM, possession of a 3 annas' share of turuf Mohinderpore, &c., under a deed of mortgage and conditional sale dated the 5th

of Jyte 1244 B. S. The defendant denies the authenticity of the deed, the production of which, bearing her seal, she attributes to the roguery of the plaintiff, who was her mooktear, and of her naib who had charge of her seal. She also pleads ignorance of notices from the collectorate in respect to the registry of the plaintiff's name as proprietor, and from the civil court in respect to foreclosing the mortgage. In the rejoinder sundry circumstances are stated in refutation of the defence; the principal of which are that the defendant and another sharer came to Maldah in a boat, and borrowed money to save this estate and another from sale for arrears of revenue; that the bond for the other estate was subsequently redeemed by the defendant; that she gave a mookhtearnamah to have the plaintiff's name entered in the collector's books as the proprietor of the property in dispute, and that the plaintiff, since his name was entered, has regularly paid the revenue. This case was formerly dismissed by the principal sudder ameen, on the ground that the plaintiff had not taken any steps to produce witnesses. It was remanded for revision, and afterwards transferred to the sudder ameen at Maldah. Openderschunder Bhutacharjee, sudder ameen, decreed the case on the grounds of the authenticity of the document having been proved,—the usual notices in respect to the foreclosure of the mortgage and the registry of the plaintiff's name having been served,—and the plea of ignorance on the part of the defendant being unsupported by proof or probability. Radha Beenud, nephew and next heir of the defendant, petitioned in appeal against the sale being confirmed, on the ground that the defendant had not power to sell. I considered the sale clearly proved, but remanded the case to take evidence as to the late "Nundolal," then next heir, and the present next heir (the petitioner, Radha Beenud,) having consented to the transaction the money being required to save the estate from sale for arrears of revenue, and also that the pundit of the division might be called upon to state whether, or not, under such circumstances, the conditional sale by the defendant was legal. The sudder ameen has now dismissed the case on the ground of discrepancies in the evidence as to the signing and sealing of the deed, and the delivery of the rupees, all of which I consider immaterial, being accounted for by the fact that some of the persons were in a boat and others on the bank. The pundit's opinion is not very clear, the case not having been put to him distinctly; but I am satisfied from the evidence that the money was borrowed to save the estate from sale for arrears of revenue, and that the then next heir (Nundolal) consented, as well as the petitioner Radha Beenud, now the next heir, by whom the deed was attested. On the above grounds I reverse the decision of the sudder ameen, and decree the appeal with costs.

THE 20TH APRIL 1848.

No 11 of 1846.

Appeal from the decision of Pundit Nurhoree Seeromonee, Sudder Ameen, dated the 5th of August 1846.

Shamanand Jha and another, (Defendants,) Appellants,

versus

Roopchand and another, (Plaintiffs,) Respondents.

THIS suit was instituted to enforce the sale of a "mouroosee jote," which was formerly attached in execution of a decree obtained by the plaintiffs. The defendants who formerly owned the "jote" did not file any answer, and the other defendant, Shamanand Mujoomdar, has appealed separately in case No. 12. The defendants (appellants) in this case, assert that they purchased half the "jote" on the 21st of Bhadoon 1244, and that they objected to its sale when attached in execution of the plaintiffs' decree against the former proprietors. The sudder ameen decided the case in favor of the plaintiffs on the ground of discrepancies in the evidence regarding the sale to the appellants in this case, and the purchase of the other half of the jote having been made by the appellants in case No. 12, while it was under attachment. I can discover no discrepancies in the evidence which is supported by the kawala, kubooleuts, receipts, &c. I therefore reverse the sudder ameen's decision, and decree the appeal with costs.

THE 20TH APRIL 1848.

No. 12 of 1846.

Appeal from the decision of Pundit Nurhoree Seeromonee, Sudder Ameen, dated the 5th of August 1846.

Shamanand Mujoomdar, (Defendant,) Appellant,

versus

Roopchand and another, (Plaintiffs,) Respondents.

THE particulars of this case are given in case No. 11 of 1846. The sudder ameen decided against the appellant in this case, on the ground that his purchase of half the "mouroosee jote" claimed was made while it was under attachment. It appears that the plaintiffs got the "jote" attached in execution of a decree in May 1244, when Shamanand Jha and others, (appellants in case No. 11) objected, stating that they had purchased half of it in "Bhadoon." In Poos 1254 the suit of "Rajnath," who claimed the jote, was nonsuited, and both the above cases struck off the file on the ground that no order touching the "jote" could be passed until Rajnath's case was finally disposed of. In Assar 1250 the plaintiffs petitioned to have the "jote" attached, but that was disal-

lowed with reference to the sudder ameen's order of 1245 above-mentioned. This suit was instituted on the 22d Bhadoon 1250, nearly five years after the order which virtually released the "jote" from attachment; and the purchase of half of it by the appellants in this case was made on the 3d Chyte 1247, rather more than two years after the said order. I therefore reverse the decision of the sudder ameen, and decree the appeal with costs.

THE 24TH APRIL 1848.

No. 2 of 1847.

Appeal from the decision of Pundit Nurhoree Seeromonee, Sudder Ameen, dated the 10th of December 1846.

Gopynath Shah, (Defendant,) Appellant,
versus

Alum Chand Shah and others, (Plaintiffs,) Respondents.

CLAIM possession of a pukka dwelling house, purchased by the plaintiffs on the 22d of Maug 1251 from Sreemutty, widow of Nemaichurn. The defendant, Gopynath, asserts that the house is his. It appears that Nemaichurn, the husband of Sreemutty, had dealings with the plaintiffs, who are Bankers; and that on his death there was a balance against him of rupees 508-13-6-1, in liquidation of which Sreemutty made over to the plaintiffs a boat valued at 60 rupees, with rupees 73-13-16-1 in cash, and for the balance sold another boat for 75 rupees, and the house in dispute of 300 rupees. On the plaintiffs taking possession of the house, the defendant, Gopynath, remonstrated, and subsequently recovered possession under Act IV. of 1840. The plaintiffs assert that Nemaichurn, deceased, Gopynath and two other brothers separated in 1238, when the house in dispute fell to the share of the said Nemaichurn, who occupied it until his death, after which it was sold to them by his widow. The defendant, Sreemutty, supports the assertion of the plaintiffs. The defendant, Gopynath, states that he and his brothers separated in 1234, when Nemaichurn received 225 rupees in lieu of his share of the paternal dwelling house; and that he, Gopynath, in 1236 purchased the house now in dispute, enlarged it, and agreed to his brother, Nemaichurn, occupying it until he could build one for himself. The sudder ameen decreed the case, on the grounds that the receipts for rent filed by the defendant, Gopynath, were in his father's and not in his own name; that no document was produced by him in support of Nemaichurn's having received 225 rupees in lieu of his share of the paternal house property; that even the defendant's witnesses prove that Nemaichurn lived in the house in dispute for 16 or 17 years, and that he, at the request of Sreemutty, had agreed to redeem the "kawala"

after she had sold the house, which would not have happened had Sreemutty no interest in it; that a receipt for rent filed by Sreemutty and her witnesses prove that the house in dispute was purchased before the separation of the brothers, and fell to the share of Nemaichurn who lived in it up to his death, after which it was occupied by Sreemutty who paid rent for it and sold it to the plaintiffs; and lastly, that the "kawala" and witnesses for the plaintiffs prove the said sale. The point for decision in this case is whether the house in dispute was the property of the defendant, Gopynath, or of his brother, Nemaichurn, and his widow, Sreemutty, after him. Gopynath has produced a "kawala" of 1236 in his own name, as well as rent and chowkeedaree receipts from 1236 to 1250. He is supported by the evidence of the person who sold the house, and numerous other witnesses who state that it was sold after his separation from his brothers. It is clear that he made no claim to the boats actually belonging to his brother's estate; and his having, at the request of Sreemutty, agreed to redeem her "kawala," provided she made over to him her jewels and other property, by no means prove that he thereby allowed that the house had been hers. On the other hand, the fact of Nemaichurn having lived in the house for several years is the only thing in favor of the plaintiffs, whose witnesses (most of them before an ameen deputed to enquire into the case) assert that Nemaichurn requested Gopynath to purchase the house, which he did in his own name before the separation of the brothers; that the house was enlarged after the separation by Gopynath with Nemaichurn's money, and that the rent and chowkeedaree receipts were obtained in Gopynath's name because Nemaichurn was absent. The receipt for rent filed by Sreemutty, which the sudder ameen considers satisfactory, is in my opinion, the contrary. It is for the year 1251, after the dispute commenced, and separate, while those from 1236 to 1250, filed by Gopynath, are included with the receipts for the rent of the paternal dwelling, but specified as on account of Gopynath's own purchase. The evidence of the two principal witnesses for the plaintiffs, taken before the sudder ameen himself, is wanting in openness and clearness, save in respect to the points they endeavor to establish, and with regard to them it is suspiciously complete. One states that he wrote the "kawala" when the house was purchased in 1236; that he was afterwards present at the division of the property when the brothers separated; and that when Sreemutty sold the house to the plaintiffs, he was again the writer of the "kawala." The other man is a cousin-german of Sreemutty. For the above reasons, I am satisfied that the house in dispute was the property of the defendant, Gopynath; and I therefore reverse the decision of the sudder ameen and decree the appeal with costs.

ZILLAH HOOGHLY.

PRESENT: F. W. RUSSELL, Esq., JUDGE.

THE 5TH APRIL 1848.

Case No. 7 of 1847.

Appeal from the decision of James Reily, Esquire, Principal Sudder Ameen of Hooghly, dated the 15th day of February 1847.

Sheikh Assudoollah, (Defendant,) Appellant,

versus

Wullauttee Khanum, (Plaintiff,) Respondent.

SUIT for the refund of half of the rent realized on account of the talook Dwarbassinee by sale of the said talook; laid at Company's rupees three thousand, six hundred and seventy-nine, annas ten, gundahs eight (Company's rupees 3,679, 10 annas, 8 gundahs.)

The papers of this case shew that at the time the case No. 2,246, *Toraub Ali versus Chand Khanum and Sukeena Khanum*, was pending in the Sudder Dewanny Adawlut, regarding the talook Dwarbassinee, the said talook was advertized for sale for the arrears of rent due for the year 1231 B. S., when the mother, Chand Khanum, and Sukeena Khanum, the aunt of the plaintiff, in order to save their rights and interests, borrowed the sum of rupees three thousand, seven hundred and nine, annas eight, from one Mirza Ghallib Ali, on the security of one Bunda Ali and one Hajee Hunneef, the latter person being the father of the defendant; that in the month of February 1825, A. D., the said Hajee Hunneef, being the attorney in the abovementioned case, deposited the said amount in the Sudder Board of Revenue, consequently the sale of the talook was postponed; that the said Hajee Hunneef subsequently filed a suit, under No. 1,506, stating that the sum of rupees three thousand, seven hundred and nine, eight annas, was his own money; that on the 7th day of May 1832, the late judge considering the said monies to have been the property of the said Chand Khanum and Sukeena Khanum, dismissed the case; that the plaintiff's mother leaving the plaintiff a minor, who having now attained to her majority, has instituted this suit, as a pauper, for the sum of her mother's half share of the amount deposited in the Sudder Board of Revenue, including interest.

The defendant, Sheikh Assudoolah, in his answer, states that his father, Hajee Hunneef, purchased the respective shares of the mother (Chand Khanum) and the aunt (Sukeena Khanum) of the plaintiff in the said talook, on the 24th day of June 1824, under a bill of sale, although no mutation of the names has taken place in the office of the collector; that at the time the talook was about to be sold for arrears of rent, his (defendant's) father, by name Hajee Hunneef, to save the rights and interests of his purchase, deposited the whole amount due for rent in the Sudder Board of Revenue; that subsequently he instituted a suit under No. 1,506 against the other share-holders for the above sum, but as the plaint was incorrect the case was dismissed; that his father, the said Hajee Hunneef, died subsequently, and as his time had been occupied in attending to, and looking after his other cases, he has been prevented from appealing the case; but on the perusal of the petition filed by the mother and aunt of the plaintiff in the case No. 2,246, the fact of those two persons, that is to say the mother (Chand Khanum) and the aunt (Sukeena Beebee) having sold their respective shares to the said Hajee Hunneef, and of their having received the whole of the purchase money from him (soliciting at the same time that the said Hajee Hunneef may be put into possession of the same) will be clearly established; moreover, the defendant states this suit is barred by lapse of time, &c.

James Reily, Esq., the principal sudder ameen of Hooghly, decreed the case, on the grounds set forth in his decision.

I do not see any sound reason on which to disturb the decision of James Reily, Esq., principal sudder ameen of Hooghly, passed on the 15th day of February 1847. I therefore dismiss this appeal. Costs to be paid by each party respectively, as the respondent appeared unsummoned.

THE 5TH APRIL 1848.

Case No. 16 of 1847.

Appeal from the decision of Pundit Sreeram Turkolunkar, Sudder Ameen of Hooghly, dated the 28th day of September 1847.

Ramchunder Seel, (Plaintiff,) Respondent,

versus

Gopeechand Seel, Jadubchand Seel, Beernarayn Seel, Behareelal Seel, Rammonce Dossee, Joynarayn Dutt, Khetternauth Seel, the Collector of Hooghly, and Sheikh Asmutoolah Ameen, (Defendants,) Respondents.

SUIT to reverse an order passed by the magistrate of Hooghly, under Act XXI. of 1841, for the stoppage of a new drain and for the continuance of an old privy; laid at Company's rupees three hundred and seventy (Company's rupees 370.)

The papers in this case shew that the plaintiff purchased a house in Chinsurah belonging to one Birjkissore Birjbasseë, &c.; that at the time the plaintiff had commenced the repairs of the house in question, his enemies, Gopeechand Seel and others, with a view to the annoyance of the plaintiff, instigated the ameen in charge of the roads to report to the magistrate that the plaintiff had stopped a drain within the house in dispute, which was the water-course of the neighbourhood, and had commenced building a new privy on the spot; that the magistrate, without making any enquiry, ordered the drain to be re-opened and the privy removed, which order was subsequently confirmed by the sessions judge.

The plaintiff subsequently instituted this suit.

The Government pleader in his answer states that the magistrate and the sessions judge having decided the case, under the provisions of Sections 1 and 4 of Act XXI. of 1841, the Government cannot be made a party to the case.

The defendant, Khetternauth Seel, in his answer, states that the drain in question is one of old and long standing; that there is not any other outlet by which the accumulated water of the neighbourhood can be drained or carried off, and that this case cannot be legally decided in a civil court, because there is not any regulation which declares that a civil suit may be instituted for the reversal of an order passed under Act XXI. of 1841.

The sudder ameen, Pundit Sreeram Turkolunkar, dismissed the case, on the grounds that a civil court cannot take cognizance of it under the provisions of Act XXI. of 1841, and the Circular Order dated the 20th of February 1844.

I do not perceive any sound reason on which to disturb the decision of the sudder ameen, Pundit Sreeram Turkolunkar, passed on the 28th day of September 1847. I therefore dismiss this appeal with costs.

THE 6TH APRIL 1848.

Case No. 8 of 1847.

Appeal from the decision of Pundit Sreeram Turkolunkar, Sudder Ameen of Hooghly, dated the 12th day of July 1847.

Gopalchunder Ghose, (Defendant,) Appellant,

versus

Tripoorasoonderee Dossee, (Plaintiff,) and
Shamachurn Bose, Rajchunder Dutt Moonshee, Anundnarayn Ghose, and Kystochunder Ghose, (Defendants,) Respondents.

SUIT to reverse a summary award passed under Regulation VII. of 1825, and to obtain possession of the land in dispute: laid at Company's rupees five hundred and ninety-nine (Company's rupees 599.)

The plaint sets forth that one Bhogobanchunder Dutt Moonshee possessed a pukka house, and eleven cottahs of rent-free "lakheraj" land in mouzah Debanundpore; that after the death of the said Bhogobanchunder Dutt, his wife, by name Juggodissuree, being involved in debt, sold the property aforesaid to one Ramchunder Bose, the father of the plaintiff, for the sum of rupees five hundred, on the 3d day of Assar in the year 1247 B. S.; that the said Ramchunder Bose purchased the property in question in the name of his son, Shamachurn Bose, and subsequently he, the said Ramchunder Bose, made over the said property in question under a deed of gift to the plaintiff, who continued in possession; that the defendant, Gopaulchunder Ghose, in execution of decree No. 12, against Rajchunder Dutt Moonshee, the husband of the plaintiff, caused the disputed property to be attached, alleging it to be six cottahs instead of eleven; that the plaintiff then preferred her claim, which being admitted by the additional principal sudder ameen, the decreedar or the defendant, Gopaulchunder Ghose, preferred a summary appeal to the judge under No. 114, who reversed the orders passed by the additional principal sudder ameen, and the judge's decision was upheld by the Court of Sudder Dewauny; that the defendant, Anundharayn Ghose, also in execution of a decree No. 42, procured a sequestration of the said property; but a claim being preferred to it by the plaintiff, the same was released from attachment; and in consequence of the decreedar, Kistochunder Ghose, having applied for the proceeds of the sale of the said property, the plaintiff instituted this suit.

The defendant, Gopaulchunder Ghose, in his answer, states that the husband of the plaintiff purchased the property in dispute in the name of his brother-in-law, Shamachurn Bose, and that the house was built with the bricks prepared by the husband of the plaintiff, and that the plaintiff had not received the property under a deed of gift, nor did she purchase it with money acquired by her own labor, &c.

The defendant, Shamachurn Bose, in his answer, states that the property in question, purchased in his, that is to say in the name of Shamachurn Bose by Ramchunder Bose, the father of the defendant, Shamachurn Bose, who, that is to say Ramchunder Bose, with his (Shamachurn Bose's) consent subsequently made it over to the plaintiff under a registered deed of gift, and that he, the defendant, has not any right nor interest in the property.

The sudder ameen, Pundit Sreeram Turkolunkar, decreed the case for the reasons given in his decision.

On the examination of the bill of sale filed by the plaintiff, it appears that the sudder ameen, Pundit Sreeram Turkolunkar, omitted to take the deposition of Kummul Lochun Mitter, which it was most essential for him to have done; hence his decision is not complete. I therefore decree this appeal, and reverse the deci-

sion of the sudder ameen, Pundit Sreeram Turkolunkar, passed on the 12th day of July 1847; and I direct that the case be remanded to the said sudder ameen for re-trial, with instructions that the case be restored to its original number on his file, and that he, the sudder ameen, direct the plaintiff to file an "issu-nuvissee" for Kummul Lochun Mitter; and, having taken the deposition of the said Kummul Lochun Mitter, to re-try the case.

Costs to be paid for the present by each party respectively, and ultimately by the losing party. The value of the stamp upon the petition of appeal to be refunded to the appellant.

THE 19TH APRIL 1848.

Case No. 21 of 1847, A. D.

Appeal from the decision of James Reily, Esquire, Principal Sudder Ameen of Hooghly, dated the 13th day of August 1847.

Ram Podedar, Jadob Podedar, and Nobceenchunder Roy,
(Defendants,) Appellants,

versus

Gungapersaud Ghose, (Plaintiff,) Respondent.

CLAIM for damages occasioned by the resisting the measurement of certain villages: laid at Company's rupees two hundred and fifty-seven, annas fifteen, gundahs twelve.

The plaint sets forth that the four mouzahs, that is to say Wuzerpore, Kusba, Banna, and Balleegurree, within the plaintiff's putnee talook Lot Kusba, are four contiguous villages, or villages adjoining to each other; that the plaintiff deputed an ameen to measure them, that is to say to measure the aforesaid four villages, in the month of Bysack 1247 B. S.; that the ameen was commencing the measurement of the villages Balleegurree and Wuzerpore, when the defendant and others resisted the said ameen, which fact having been proved in the fouzdaree court, that is to say that the ameen had estimated the probable increase in the rent at nine hundred rupees, the plaintiff therefore sued for this sum, namely, the sum of nine hundred rupees, with the wages of the ameen and the costs of a criminal suit, making in all a sum of Company's rupees one thousand, four hundred and eighty-six.

The defendants, Ram Podedar, Jadob Podedar, and Nobinchunder Roy, in their answer, deny having offered any resistance whatever to the measurement ordered by the plaintiff, who with the view to deprive them of the little "lakheraj," or rent free land, which they hold in their possession, has instituted this suit, &c.

The principal sudder ameen, James Reily, Esquire, on the inspection of the "jumma wausil baukee" accounts and papers filed by the plaintiff, for the years 1243 B. S., 1244 B. S., 1245 B. S., of the villages Kusba and Wuzerpore, decreed the case, for the reasons stated in his decision, to the extent of rupees 257, 15 annas, 12 gundahs.

The defendants being dissatisfied with the decision of the principal sudder ameen, preferred this appeal, on the ground that the said principal sudder ameen had decided the case in contravention of the orders of the Court of Sudder Dewanny Adawlut; and the respondents, being likewise dissatisfied with the orders of the said principal sudder ameen for having decreed the sum of two hundred and fifty-seven rupees, annas fifteen, gundahs twelve, alone, and no more, have also preferred another appeal under No. 22.

The papers of this appeal and those of No. 22, were this day brought forward; and, on a careful and attentive perusal of them, it appears that this case was formerly decided by the late principal sudder ameen, Baboo Roy Radhagovind Shome, on the 17th day of December 1842, which decision was upheld by the judge on the 25th of September 1844. On special appeal to the Court of Sudder Dewanny Adawlut by the appellant, the Superior Court remanded the case for re-trial on the 13th of June 1846, with orders to restore the case to its original number on the file, and having deputed an ameen to ascertain the real assets of the said mehaul, to award to the plaintiff such damages as may appear fair and just. In accordance to the said orders, an ameen was deputed by the principal sudder ameen, who, in consequence of the delay on the part of the ameen in making the local investigation, summoned the said ameen; and, without taking his report, decided the case on the perusal of the wausil baukee papers, filed by the plaintiff, on mere conjecture, which appears to me to be in contravention of the orders of the Court of Sudder Dewanny Adawlut. Consequently I decree this appeal, and reverse the orders of the principal sudder ameen passed on the 13th day of August 1847, and direct that the case be remanded for re-trial to the said principal sudder ameen, with directions to restore the case to its original number on his file; and, having supplied the omissions noticed in this decree, to re-hear the case.

Costs to be paid by each party respectively for the present, and ultimately by the losing party. The value of the stamp on the petition of appeal is to be refunded to the appellant.

THE 19TH APRIL 1848.

Case No. 22 of 1847, A. D.

Appeal from the decision of James Reily, Esquire, Principal Sudder Ameen of Hooghly, dated the 13th day of August 1847.

Gungapersaud Ghose, (Plaintiff,) Appellant,

versus

Ram Podedar, Jadob Podedar, Nobeenchunder Roy, Govindo Chungdar, Attahoollah, Rammohun Kamar, Ramjee Kamar, Goverdhun Pakree, and Poran Pakree, (Defendants,) Respondents.

CLAIM for damages occasioned by resistance of measurement of certain villages : laid at Company's rupees one thousand, four hundred, and eighty-six (Company's rupees 1486.)

The plaint sets forth that the four mouzahs, that is to say Wuzerpore, Kusba, Banna and Balleeguree, within the putnee talook lot Kusba, belonging to the plaintiff, are four contiguous villages, or villages adjoining one to the other; that the plaintiff deputed an ameen to measure them, that is to say to measure the aforesaid four villages, in the month of Bysack 1247 B. S.; that the ameen was commencing the measurement of the villages Balleeguree and Wuzerpore, when the defendant and others resisted the said ameen, which fact having been proved in the fouzdaec court, that is to say that the ameen had estimated the probable increase in the rent at nine hundred rupees, the plaintiff therefore sued for this sum, that is to say the sum of nine hundred rupces, with the wages of the ameen and the costs of a criminal suit, making in all the sum of rupees one thousand, four hundred and eighty-six.

The defendants, Ram Podedar, Jadob Podedar and Nobeenchunder Roy, in their answer, deny having offered any resistance whatever to the measurement ordered by the plaintiff, who with the view to deprive them of the little "lakheraj," or rent-free land, which they hold in their possession, has instituted this suit.

The principal sudder ameen, James Reily, Esquire, after a close inspection of the "jumma wausil baukee" accounts and papers filed by the plaintiff for the years 1243 B. S., 1244 B. S., and 1245 B. S., of the villages Kusba and Wuzerpore, decreed the case, for the reasons stated in his decision, to the extent of rupees 257-15-12.

The respondents being dissatisfied with the orders of the said principal sudder ameen for having decreed the sum of two hundred and fifty-seven rupees, fifteen annas, and twelve gundahs, alone, and no more, preferred this appeal.

The papers of this appeal and those of No. 21 were this day brought forward; and, on a careful and attentive perusal of them, it appears that this case was formerly decided by the late principal

sudder ameen, Baboo Roy Radhagovind Shome, on the 17th day of December 1842, which decision was upheld by the judge on the 25th day of September 1844. On a special appeal to the Court of Sudder Dewanny Adawlut by the appellant, the superior court remanded the case for re-trial on the 13th day of June 1846, with orders to restore the case to its original number on the file; and, having deputed an ameen to ascertain the real assets of the said mehaul, to award to the plaintiff such damages as may appear fair and just. In accordance to the said orders, an ameen was deputed by the principal sudder ameen, who, in consequence of the delay on the part of the ameen in making the local investigation, summoned the ameen, and, without taking his report, decided the case on the perusal of the "wausil baukce" papers filed by the plaintiff, on mere conjecture, which appears to me to be in contravention of the orders of the Court of Sudder Dewanny Adawlut. Consequently I decree this appeal, and reverse the decision of the principal sudder ameen passed on the 13th day of August 1847, and direct that the case be remanded for re-trial to the said principal sudder ameen, with directions to restore the case to its original number on his file; and, having supplied the omissions noticed in this decree, to re-hear the case.

Costs to be paid by each party respectively for the present, and ultimately by the losing party. The value of the stamp on the petition of appeal to be refunded to the appellant.

THE 20TH APRIL 1848.

Case No. 55 of 1848.

Appeal from the decision of Molvi Israr Ali, Moonsiff of Keerpoy, dated the 22d day of January 1848.

Komulakaunto Ranah, Jummojoy Ranah, and Radhabullub Ranah,
(Defendants,) Appellants,

versus

Guddadhur Ghose, (Plaintiff,) Respondent.

CLAIM for the recovery of a sum of money advanced on bond including interest: laid at Company's rupees one hundred and forty-eight, annas thirteen, gundahs seventeen, kowree one, and krant one (Company's rupees 148-13-17-1-1.)

The papers of this case shew that the appellants preferred this appeal on the 26th day of February 1848, A. D., stating in their petition of appeal that they would subsequently file their "wujoohaut," or grounds for appeal. The appellants having failed to proceed with the case for upwards of six weeks, I dismiss this appeal, with costs, under the provisions of Act XXIX. of 1841.

THE 20TH APRIL 1848.

Case No. 58 of 1848.

Appeal from the decision of Mohummud Yabsannul Ghunnee, Moonsiff of Jahanabad, dated the 28th day of January 1848.

Ramnarayn Burraul, (Defendant,) Appellant,

versus

Ramkomul Bose, (Plaintiff,) Respondent.

CLAIM for the recovery of a sum of money advanced on a bond including interest: laid at Company's rupees thirty-seven, annas fifteen, gundahs six (Company's rupees 37-15-6.)

From the papers of this case, it appears that the appellant preferred this appeal on the 29th day of February 1848, stating in his petition of appeal that he would subsequently file his wujoohaut, or grounds for appeal. The appellant has failed to proceed with his case for the period of more than six weeks, I therefore dismiss this appeal with costs, under the provisions of Act XXIX. of 1841.

THE 20TH APRIL 1848.

Case No. 145 of 1847.

Appeal from the decision of Molvi Mohummud Alum, Moonsiff of Oolooberria, dated the 12th day of June 1847.

Muddoosoodun Acharje, (Plaintiff,) Appellant,

versus

Gunganarayn Acharje and Roopnarayn Acharje, (Defendants,) Respondents.

SUIT for the restoration of certain monies given on a marriage contract: laid at Company's rupees twenty-three, annas four, (Company's rupees 23-4.)

The plaint sets forth that the defendant, Gunganarayn Acharje, promised to give his daughter, Sreemotee Bamasoonderee, in marriage to the plaintiff, Muddoosoodun Acharje; that Roopnarayn Acharje was the person who had arranged the match under a contract of marriage, dated the 7th day of Joystee 1251 B. S., under which contract the plaintiff was to pay to the defendant the sum of rupees twenty-two, annas twelve for the expenses of the marriage, &c.; that the plaintiff has since the abovementioned date had, on several occasions, given to the defendant money amounting to rupees fourteen in cash, besides clothes, &c., to the daughter to the value of rupees nine, annas four; but the defendant having secretly given his daughter in marriage to another person, who resided at a distant place, instead of to the plaintiff, he, the plaintiff, demanded the restoration of all the money in cash, &c., which he,

the plaintiff, had advanced to the defendant, which the defendant failing to do, the plaintiff had instituted this suit.

The defendant, Gunganarayn Acharje, admits, in his answer, that he had agreed to give his daughter in marriage to the plaintiff, who had paid to him five rupees, twelve annas in cash; but he adds, that in consequence of the plaintiff having failed to pay the remainder of the sum stipulated in the marriage contract, and having delayed to fix a day for the wedding, and as the girl was marriageable, he, the defendant, could not according to the shasters allow her to remain unmarried any longer, he, the defendant, had therefore given the damsel in marriage to another person, who resided at a distant village; that he, the defendant, had repaid, in the presence of several respectable witnesses, to the plaintiff the sum of five rupees, twelve annas, which he, the defendant, had received in cash, and the three rupees on account of the articles which the plaintiff had presented to his daughter; and he, the defendant, received back from the plaintiff the marriage contract, which he had given to him, &c.

The defendant, Roopnarayn Acharje, in his answer, supports the plaint.

The moonsiff dismissed the case, on the grounds set forth in his decision.

From all the circumstances of this case, and upon a close examination of both the two documents filed by two parties, as the marriage (contract, the one filed by the appellant,) appears to be the original and genuine instrument, and that filed by the respondent, which the moonsiff has declared to be the original one, seems to me clearly to be fabricated, I therefore decree this appeal, and reverse the decision passed by the moonsiff on the 12th day of June 1847. The amount of principal and costs of suit in both courts, with interest to the date of realization, to be paid by the respondents.

THE 20TH APRIL 1848.

Case No. 146 of 1847.

Appeal from the decision of Baboo Juggobundoo Banerjee, Moonsiff of Byedbattee, dated the 12th June 1847.

Kowsullea Dossee, (Plaintiff,) Appellant,

versus

Rumanauth Gossein, Prankisto Gossein, Gourmohun Gossein, Takoordoss Dutt, Keenoo Pyke, Toolseram Sircar, and Oleo Kahbar Nugdee, (Defendants,) Respondents.

SUIT to obtain a receipt for rent already paid : laid at Company's rupees fifty-four, annas three, gundahs six, cowrees three (Company's rupees 54-3-6-3.)

The papers in this case shew that the late husband of the plaintiff, the name of the said husband being Ramsoonder Mundle, had held in farm a certain portion of land situated in the village called Beeghattee, at an annual rent of rupees eighteen, annas fourteen, gundahs thirteen, kowrees two; that out of the amount rent paid from the year 1246 B. S. to the year 1252 B. S. the plaintiff has given a receipt for the sum of seventy-eight rupees, eight annas, and ten gundahs alone; and, in consequence of the talookdars having failed to give a receipt for the balance, that is to say, for the sum of fifty-four rupees, three annas, six gundahs, and three cowrees, the plaintiff instituted this suit.

The defendant, Gourmohun Gossein, in his answer, denies the fact as stated in the declaration of the plaintiff; and adds that the late husband of the plaintiff had, by a deed of gift, made over all his property to his eldest son-in-law, one Hurchunder Paul, at whose death his son, that is to say, the son of Hurchunder Paul by name Sreeram Paul, not being able to pay the rent of the land in dispute, and arrears accruing, he, the said Sreeram Paul, relinquished the land aforesaid, when the defendant re-let the land in question to other ryots.

The moonsiff dismissed the case on the grounds set forth in his decision.

The moonsiff appears to place no confidence in the depositions of the witnesses for the plaintiff, owing to their being his relatives. From the village "lawazima," or papers filed by the talookdar, specially for the year 1251 B. S., and the deposition given by Takoordoss Dutt, the naib of the talookdar, before the late moonsiff, Gopaulkisto Roy, it clearly appears that the defendants had received from the plaintiff, through one Chunder Mundle, the sum of three rupees for the sale of fish, and ten rupees on account of jagree. The moonsiff states in his decision that agreeably to a decision passed by the Court of Sudder Dewanny Adawlut, No. 306, a claim for receipts of rent paid in past years is inadmissible. This is in opposition to an order passed on the petition No. 501 of 1846, in the matter of Ramtaruck Nundee, (filed in the Court of Sudder Dewanny on the 30th of September 1847,) I therefore decree the appeal, and reverse the decision passed by the moonsiff on the 12th day of June 1847; and order that out of the sum demanded by the plaintiff, he is only to receive a receipt for the thirteen rupees enumerated in the "lawazima," or village papers; and in consequence of the talookdar and his naib not having given a receipt for the said sum of thirteen rupees, they are to pay twice as much as that sum, that is to say, the sum of twenty-six rupees as a fine under the provisions of Section 63, Regulation VIII. of 1793, together with the whole of the costs of all courts, with interest, to the appellants.

THE 22D APRIL 1848.

Case No. 155 of 1847.

Appeal from the decision of Baboo Nobinchunder Mitter, Moonsiff of Rajapore, dated the 18th day of June 1847.

Ramruttun Mullick, Shumboonarayn Mullick, Bhugwanchunder Mullick, Omachurn Mullick, the heir of the late Tarachurn Mullick, Tripoorachurn Mullick, Ryechnurn Mullick, and Bama-churn Mullick, (Plaintiffs,) Appellants,

versus

Sheikh Gholaum Kader, Abdool Jhuffoor, Kurreem Moollah, Rambullub Seit, Ramanund Seit, Sheikh Moteeoollah, and Sheikh Nizam, (Defendants,) Respondents.

CLAIM for damages for the loss of paddy and straw, including interest : laid at Company's rupees sixty-one, annas eight, gundahs fifteen.

The plaint sets forth that in the nuzoorauth land belonging to one Burhutoollah, in the village called Lathgoorah, the plaintiffs hold possession of five beegahs of hereditary sallee land, on the west side of the Khanpookur, under a perpetual lease, at an annual rent of four rupees; that on the first day of Poose 1252 B. S., the defendants forcibly cut and carried away the paddy and the straw from off the land in dispute, therefore the plaintiffs instituted the suit.

The defendants, Sheikh Gholaum Kader and Abdool Jhuffoor, in their answer, deny the claim of the plaintiff, and declare that on the resumption of the land in dispute by the Government, they had taken from the British Government the said land now in dispute under a perpetual settlement; that the jotedars or ryots of the said land, that is to say, Abdoor Ruheem and Rambullub Seit, in the year 1252 B. S. cultivated, and had sown with paddy the said disputed land; that in consequence of the plaintiffs having by force taken away the produce of the year 1253 B. S. from off the land in question, the abovenamed ryots, that is to say, Abdoor Ruheem and Rambullub Seit, instituted a suit against them, the plaintiffs aforesaid, under No. 355, &c.

The moonsiff nonsuited the case, on the grounds set forth in his decision.

The moonsiff certainly ought to have instituted a local investigation to ascertain which of the two parties had possession of the land in dispute in 1252 B. S., and by whom the said lands have been cultivated and sown with seed; and also whether the respondents did cut and take away by force the said produce. The said moonsiff having omitted to set all these several points at rest, he leaves the case open to dispute, and therefore his decision is incomplete. I therefore decree this appeal, and reverse the

decision of the moonsiff, Baboo Nobinchunder Mitter, dated the 18th day of June 1847, and direct that the case be remanded to the said moonsiff for re-trial, with instructions to restore the case to its original number on his file, and, having supplied the omissions noticed in this decree, to re-hear the case.

Costs to be paid for the present by each party respectively, and ultimately by the losing party. The value of the stamp upon the petition of appeal to be refunded to the appellants.

THE 22D APRIL 1848.

Case No. 164 of 1847.

Appeal from the decision of Baboo Juggobundoo Banerjee, Moonsiff of Byedbattee, dated the 5th day of July 1847.

Petumber Mookerjee and Govindchunder Mookerjee, (Defendants,) Appellants,

versus

Puddomonee Debea, (Plaintiff,) Respondent.

SUIT to obtain possession of certain purchased "lakhiraj," or rent-free land and trees, including "wausilaut", or mesne profits : laid at Company's rupees twenty-eight, annas six, gundahs ten, (Company's rupees 28-6-10.)

The papers in this case shew that the late brother-in-law of the plaintiff, by name Muddoosoodun Mookerjee, on the 17th day of Bhadoon 1231 B. S., purchased from the defendants, Petumber Mookerjee, Govindchunder Mookerjee, Kalleckissen Mookerjee, and Ramchand Mookerjee, deceased, two cottahs of their hereditary "lakhiraj", or rent-free land, in the village of Noyhattee for the sum of ten rupees ; that Muddoosoodun Mookerjee died subsequently to this transaction, the husband of the plaintiff (the brother of the late Muddoosoodun Mookerjee, the purchaser of the two cottahs of land,) continued in the possession of the property : this person also died subsequently to the death of his brother, Muddoosoodun Mookerjee, leaving as his heirs his widow, the plaintiff, and a minor son ; these individuals remained in the possession of the property in dispute, receiving the rent from the ryots. In consequence of the defendants having dispossessed the plaintiff of the land in question, in 1249 B. S., she, the plaintiff, instituted this suit.

The defendants, in their answer, deny having sold the land in dispute, and the defendant, Govindchunder Mookerjee, further states that he was a minor at the time the "kuballa," or bill of sale, was executed, &c.

The moonsiff decreed the case, on the grounds set forth in his decision.

The case was, on a former occasion, remanded for re-trial to the moonsiff by the late additional principal sudder ameen, Molvi Syud Oosman Ali, on the 17th of March 1847, in consequence of the ameen who had been deputed to make the local enquiry had not been duly sworn, as directed in Section 17, Regulation IV. of 1793. The moonsiff now states that the ameen who conducted the former local investigation cannot be found; hence it is necessary that the moonsiff should depute another ameen after he, the ameen, had been legally sworn. The appellants state in their petition of appeal, that through the connivance of the respondents, they, the appellants, were formerly unable to produce certain necessary witnesses; these persons the appellants are now able to produce. The case as it at present stands is decidedly incomplete, and still open to dispute. I therefore decree the appeal and reverse the decision of the moonsiff passed on the 6th day of July 1847, and direct that the case be remanded to the said moonsiff for re-trial, with instructions that the case be restored to its original number on his file, and, having supplied the omissions noticed in this decree, to re-try the case.

Costs to be paid for the present by each party respectively, and ultimately by the losing party. The value of the stamp on the petition of appeal to be refunded to the appellant.

THE 22^D APRIL 1848.

CASE No. 166 of 1847.

Appeal from the decision of Baboo Juggobundoo Banerjee, Moonsiff of Ryedbattee, dated the 8th day of July 1847.

Gourmohun Gosseeamee, Zumeendar, and Thakoordoss Dutt, Naib,
(Defendants,) Appellants,

versus

Hulodhur Ghose, (Plaintiff,) Respondent.

SUIT to obtain a dakhilla, or receipt: laid at thirty nine-rupees.

The plaint sets forth that the father of the plaintiff, by name Rampersaud Ghose, held a jummah of twenty-three beegahs and two cottahs of every description of land, with certain fisheries, in the mouzah Beeghattee, which is within the six annas' share of the zumeendaree belonging to the defendant, at an annual rent of Company's rupees forty-one, anna one; that on the death of said Rampersaud Ghose, his son, that is to say, the son of Rampersaud Ghose, the plaintiff, continued in the possession of one-half share of the said jummah, the other half share being in the possession of Soorooop Ghose; that the plaintiff has regularly paid the rent for his share, and obtained and holds the receipts for the same; that on the 18th day of Aughun 1253 B. S., the naib of the zumeendar, by name Thakoordoss Dutt, forcibly took from the plaintiff

the sum of thirteen rupees, without giving any receipts for the same, that is to say, for the thirteen rupees; consequently the plaintiff instituted this suit to obtain a receipt for the said amount.

The defendant, Thakoordoss Dutt, in his answer, admits the statement of the plaintiff to be correct, so far as regards the land, but he declares that the fisheries are separate from it, that is to say, the land : the fisheries being rented to the brother of the plaintiff, by name Gour Ghose, at an annual rent of six rupees; that the plaintiff, with the view to procure the fisheries being included in his land, filed this suit. The defendant also denies having taken by force any rent from the plaintiff, who has not paid any rent for the year 1253 B. S.

The moonsiff decreed the case to the extent of thirty-nine rupees; that is to say, thirteen rupees as the original sum claimed, and twice as much, that is to say, twenty-six rupees, in lieu of a fine.

I do not see any sound reason on which to disturb the decision of the moonsiff passed on the 8th day of July 1847. I therefore dismiss this appeal. Costs to be paid by each party respectively, as the respondent appeared unsummoned.

THE 22D APRIL 1848.

Case No. 184 of 1847.

Appeal from the decision of Molvi Mohummud Allum, Moonsiff of Oolooberria, dated the 30th day of June 1847.

Thakoordoss Sawunt, (Defendant,) Appellant,

versus

Bhobaneechurn Bose, Talookdar, (Plaintiff,) Respondent.

SUIT for arrears of rent including interest: laid at Company's rupees two hundred and seventy-seven, annas three, gundah one.

The papers of this case shew that the father of the defendant, by name Thoolseeram Sawunt, agreeably to a "kabooleut," or an agreement, dated the 11th day of Joystee 1250 B. S., held a jumma of eighty-three beegahs, eighteen cottahs, and eleven chit-tacks of every description of land in the village called Laopallah, at an annual rent of one hundred and seventy-three rupees, two annas; that the said Thoolseeram Sawunt paid one hundred and seventy rupees and eight annas, in part of his rent for the year 1250 B. S., and a further sum of sixty-six in part of his rent for the year 1251 B. S., and thirty-seven rupees, twelve annas in part of his rent for the year 1252 B. S.; that shortly after he, the said Thoolseeram Sawunt, had made the last payment, he, the said Thoolseeram Sawunt, had died, and the defendant having failed to pay the balance to the plaintiff, he, the plaintiff, instituted this suit.

The defendant, in his answer, states that he holds in possession thirty beegahs and seven cottahs of every description of land in

the village called Laopallah, at an annual rent of fifty rupees, five annas, and which sum he has regularly paid up to the year 1251 B. S. ; and that he, the defendant, holds receipts for the payment of the said rent ; that the plaintiff, under a fabricated deed or agreement in the name of the father of the defendant, in which the extent of the land is increased and the rent of the land is enhanced, instituted this suit, with the view to throw an impediment on his, the defendant's, rights and interests in his, the defendant's, hereditary "lakhiraj," or rent-free land, in the said village called Laopallah.

The moonsiff decreed the case on the grounds set forth in his decision. I do not find any sound reason on which to disturb the decision of the moonsiff, passed on the 30th day of June 1847. I therefore dismiss this appeal. Costs to be paid by each party respectively, as the respondent appeared unsummoned.

THE 22D APRIL 1848.

Case No. 186 of 1847.

Appeal from the decision of Pundit Sreeram Turkolunkar, Head Moonsiff of Hooghly, dated the 24th day of July 1847.

'Parbutteechurn Bosoo, (Defendant,) Appellant, .

versus

Birmomoe Debea, (Plaintiff,) Respondent.

SUIT to hold in possession ten cottahs of lakhiraj, or rent-free land, and for arrears of rent : laid at Company's rupees fifty-one, annas five, gundahs seven (Company's rupees 51-5-7.)

The plaint sets forth that the plaintiff is in possession of the property left to her by her late mother, Kistomonee Debea, who, that is to say, Kistomonee Debea, inherited the said property from the late Nokoor Chuckerbuttee ; that the said property, ten cottahs of homestead lakhiraj or rent-free land in the village, called Kaolab, was taken on lease by the father of the defendant, by name Bulram Bose, at an annual rent of one rupee four annas ; that on his, that is to say, Bulram Bose's death, the defendant continued in possession ; that in consequence of his, the defendant's, not having paid any rent due, save one rupee, from the year 1241 B. S. to the year 1251 B. S., the plaintiff instituted this suit, including interest.

The defendant, in his answer, declares that the land in dispute was originally taken on a lease from the former proprietor, and subsequently the same had been purchased by the father of the defendant, on the 13th day of Assar in the year 1187 B. S., from the proprietor, Theethoo Chuckerbuttee, for the sum of seventeen rupees ; that after the death of the father of the defendant, he, the said defendant, continued in possession, and he adds he has not any thing to do with the demand of the plaintiff.

The head moonsiff, Pundit Sreeram Turkolunkar, decreed the case to the extent of rupees twenty, three annas, and five korahs, on the grounds set forth in his decision. I do not see any sound reason on which to disturb the decision of the moonsiff, passed on the 24th day of July 1847. I therefore dismiss this appeal with costs.

THE 24TH APRIL 1848.

Case No. 2 of 1847.

Appeal from the decision of James Reily, Esquire, Principal Sudder Ameen of Hooghly, dated the 8th day of December 1846.

Sheikh Emambux Chowdry, (Defendant,) Appellant,

versus

Ramnarayn Mookerjeea, Goluckchunder Mookerjeea, and Tarucknauth Mookerjeea, (Plaintiffs,) Respondents.

SUIT to establish the fact that the land in dispute is "maul," or rent paying land : laid at Company's rupees two hundred and two, annas eight, (Company's rupees 202-8.)

The plaint sets forth that the plaintiffs are the putneedars of a twelve annas' share in lot Naraynparah ; that in the village Khanpore there is a tank called Maghir Pokur, which, together with thirty beegahs of every description of "maul," or rent paying land, were farmed to Nobo Mundle and to his son, Azeemooddeen Mundle, at an annual rent of rupees fifty-six, annas eleven, gundahs twelve, (Company's rupees 56-11-12); that the defendant, Emambux Chowdry, claimed the tank in dispute with its embankments, being three beegahs and one cottah of "lakhiraj," rent-free land, as being his property, alleging that the said Emambux Chowdry had farmed the said three beegahs and one cottah to the said Mundles, at an annual rent of rupees eleven, annas four ; and that he, the said Emambux Chowdry, had filed a suit, No. 674, for rupees twelve, anna one, against them, under Regulation VII. of 1799 for arrears of rent due for the year 1250 B. S., and that he had obtained a decree on the 13th day of June 1844 : in consequence of these proceedings the plaintiffs instituted this suit.

The defendant, in his answer, states that the tank in dispute, together with its embankments, amounting to three beegahs and one cottah, is rent-free "lakhiraj" land, and its taidaud is No. 64,577 and is filed in the cutcherry of the collector, that his, the said defendant's father, by name Durasuttollah, purchased the disputed tank, &c., from Shamchand Ghose on the 25th day of Aughun 1234 B. S. for the sum of one hundred and fifty-nine rupees, under a bill of sale ; that in the year 1238 B. S. he, the said defendant, re-dug out the tank, and then farmed it to certain ryots ; that the plaintiffs having filed this, without the knowledge of the

heirs of their two brothers, deceased, the case cannot be admitted into a court of justice.

The late principal sudder ameen, Baboo Roy Radhagovind Shome, under the provisions of Section 30, Regulation II. of 1819, forwarded the papers to the collector for report, who, on the 20th day of August 1846, returned them with his report, declaring the property to be "lakhiraj," or rent-free.

The principal sudder ameen, James Reily, Esquire, considering the land in dispute to be "maul," or rent paying, decreed the case, on the grounds set forth in his decision.

The appellant being dissatisfied with the decision passed by the principal sudder ameen, preferred this appeal with his reason for so doing.

On the 22d day of April 1848, the appellants filed a petition, as did also the respondents another petition agreeing thereto, in which they respectively state that they are convinced by the documents shewn by the appellants, that the tank in dispute is "lakhiraj," rent-free, and they withdrew their claim to the tank being "maul," or rent paying; and as the case has been amicably settled, they pray that each party may pay their costs respectively.

Under these circumstances, I decree this appeal in accordance to the said petitions above noticed, and reverse the decision passed by James Reily, Esquire, the principal sudder ameen of Hooghly, on the 8th day of December 1846. Costs to be paid by each party respectively.

THE 24TH APRIL 1848.

Case No. 206 of 1847.

Appeal from the decision of Mr. Alexander Davidson, Sudder Moonsiff of Serumpore, dated the 21st day of August 1847.

Deenonauth Ghose, (Plaintiff,) Appellant,

versus

Kalleedoss Chuckerbuttee and Sreemotee Bama, daughter of the late Sonatun Dutt Sankrahee, (Defendants,) Respondents.

SUIT for the recovery of the amount of a sum of money advanced on loan on a bond: laid at Company's rupees fifteen, annas ten, gundahs ten, including interest.

The papers of this case shew that the defendants borrowed on loan the sum of rupees thirteen from the plaintiff, on a bond dated the 14th day of Joystee 1252 B. S.; that they, defendants, repaid the sum of eight annas, on account of the accruing interest, in the month of Assin of the same year, that is to say 1252 B. S.; and as they failed to refund the principal money, thirteen rupees, together with the balance of the interest due, that is to say two rupees, ten annas, ten gundahs, the plaintiff instituted this suit.

The defendants, Kalleedoss Chuckerbuttee and Sreemotee Bama, in their answer, declare they do not owe the money, and deny the debt altogether; urging that the plaintiff has instituted this suit from enmity, and upon a fabricated instrument.

The sudder moonsiff, Mr. A. Davidson, of Serampore, dismissed the case, on the grounds set forth in his decision. I do not see any sound reason on which to disturb the decision of the moonsiff of Serampore, passed on the 21st day of August 1847, I therefore dismiss this appeal with costs.

THE 24TH APRIL 1848.

Case No. 210 of 1847.

Appeal from the decision of Baboo Juggobundoo Banerjee, Moonsiff of Byedbattee, dated the 13th day of August 1847.

Ramcoomaree Debeea and Omerto, *alias* Pottee Debeea, (Defendants,) Appellants,

versus

Ramnarayn Ghuttuck, (Plaintiff,) Respondent.

CLAIM for the recovery of a sum of money advanced on loan on a bond with interest: laid at Company's rupees fifty-one, annas three, gundahs four (Company's rupees 51-3-4.)

The plaint sets forth that Soodeeram Mookerjee, deceased, the late husband of Ramcoomaree Debeea, and Sreeram Mookerjee, deceased, the late husband of Omerto *alias* Pottee Debeea, borrowed on loan from the plaintiff the sum of Sicca rupees twenty-four, on a bond dated the 14th day of Bysack 1242 B. S.; that both the said individuals died without liquidating their debt, the plaintiff therefore instituted this suit against their widows, the defendants, for the sum of Company's rupees fifty-one, annas three, gundahs four, that is to say twenty-four Sicca rupees principal money, and twenty-four Sicca rupees on account of the interest accruing; thus making a total of forty-eight Sicca rupees, being equal to Company's rupees fifty-one, annas three, gundahs four.

The defendants, in their answer, deny the debt *in toto*, and declare that their late husbands, now deceased, neither borrowed a sum of money on loan from the plaintiff, nor did they ever give any bond to that person; that the plaintiff has sued them, the defendants, from enmity, on a fabricated instrument.

The moonsiff decreed the case on the grounds set forth in his decision.

The bond filed by the plaintiff clearly appears to be a fabricated instrument, badly done: it is written with fresh ink on old paper. Moreover, no dependence can be placed on the evidence of the three witnesses produced by the plaintiff to prove the authenticity of the bond in question, in consequence of the very many discrepan-

cies in their depositions and between each other ; hence I decree this appeal, and reverse the decision of the moonsiff of Byedbattee passed on the 13th day of August 1847. The respondent is to pay all the costs of both courts.

THE 24TH APRIL 1848.

Case No. 215 of 1847.

Appeal from the decision of Molvi Syud Israr Ali, Moonsiff of Keerpoy, dated the 17th day of August 1847.

Moraud Mullick and Sookoor Mullick, (Defendants,) Appellants,

versus

Birmomoe Dasse, (Plaintiff,) Respondent.

Aruz Mullick, (Defendant,) Respondent.

THIS suit is for the recovery of a sum of money advanced on loan on a bond : laid at Company's rupees one hundred and forty-seven, annas eleven, gundas five, including interest.

The plaint sets forth that the defendants borrowed the sum of rupees one hundred and twenty-six from Ramruttun Mundle, deceased, the late husband of the plaintiff, Birmomoe Dasse, on a bond dated the 21st day of Assin 1246 B. S. ; of which sum the defendants repaid fifty rupees : and failing to refund the balance, that is to say seventy-six rupees principal money, and rupees sixty-five, annas seven, and gundas ten on account of the interest, and Ramruttun Mundle having died subsequent to the transaction, his widow, that is to say Birmomoe Dasse, the widow of the late Ramruttun Mundle, deceased, instituted this suit.

The defendant, Aruz Mullick, in his answer, admits that he and his two brothers, Moraud Mullick and Sookoor Mullick, did borrow the sum of rupees one hundred and twenty-six on loan from the late husband, now deceased, of the plaintiff, Birmomoe Dasse, on a bond ; but he, the defendant, Aruz Mullick, declares that they, the three brothers, the defendants, repaid the whole amount, partly by money in cash and partly by produce in paddy ; that the husband of the plaintiff having mislaid the bond, had given to them a "tarrigh khuttee," or deed of release.

The defendants, Moraud Mullick and Sookoor Mullick, in their answer deny the debt *in toto*, declaring the bond to be a fabricated instrument ; and they add, that their brother, Aruz Mullick, with the view to annoy and injure them, has instigated the plaintiff to institute this suit. They moreover declare that the deed of release filed by Aruz Mullick, is a fabricated instrument also.

The moonsiff decreed the case, on the grounds set forth in his decision.

The moonsiff ought to have set at rest every objection urged by the appellants in their answer to their plaint, and then, and not till then, to have decided the case. His having omitted to do so, leaves his decision incomplete and unsatisfactory; hence I decree this appeal, and reverse the decision of the moonsiff of Keerpoy dated the 17th day of August 1847, and direct that the case be remanded to the said moonsiff, with orders to restore the case to its original number on his file; and, having supplied the omissions noticed in his decree, to re-try the case.

Costs to be paid for the present by each party respectively, and ultimately by the losing party. The value of the stamp upon the petition of appeal to be restored to the appellant.

THE 24TH APRIL 1848.

Case No. 220 of 1847.

Appeal from the decision of Baboo Juggobundoo, Banerjee, Moonsiff of Byedbattee, dated the 20th day of August 1847.

Mr. Thomas Smyth, manager on the part of his brother James Smyth, (Plaintiff,) Appellant,

versus

Dookheeram Saha, (Defendant,) Respondent.

SUIT for the recovery of a sum of money advanced on loan on a bond, including interest: laid at Company's rupees two hundred and forty-four, one anna, and five gundahs, (Company's rupees 244-1-5.)

The papers of this case shew that the defendant, on the 12th day of Assin 1248 B. S., borrowed on loan from the plaintiff the sum of rupees one hundred and fifty, on a bond,—the accruing interest on which loan amounted to ninety-eight rupees, one anna, and five gundahs: of which sum the defendant paid the sum of rupees thirty-two, annas eight; but the defendant failing to pay the balance, amounting to rupees two hundred and fifteen, annas nine, gundahs five, the plaintiff instituted this suit.

The defendant, in his answer, denies the debt, and states that on the day the bond is dated he was absent from his home; that on the 8th day of Assin 1248 B. S., he, the defendant, went to Calcutta to Mr. John Julius Maranda, of Terittee bazar, to recover from him some money, and that he, the defendant, did not return home until the 17th day of the same month, that is to say on the 17th day of Assin 1248 B. S., and that this suit is filed from animosity, &c.

The moonsiff dismissed the case on the grounds set forth in his decision. I do not see any sound reason on which to disturb the decision of the moonsiff, passed on the 20th day of August 1847. I therefore dismiss this appeal. Costs to be paid by each party respectively, because the respondent appeared unsummoned.

THE 24TH APRIL 1848.

Case No. 268 of 1847.

Appeal from the decision of Molvi Yahsunnul Ghunnee, Moonsiff of Jahanabad, dated the 30th day of September 1847.

Gopaul Bhandaree, Muddoosoodun Bhandaree, and Muddunmohun Bhandaree, (Defendants,) Appellants,

versus

* Bissumbhur Sircar, (Plaintiff,) Respondent.

SUIT for the recovery of a sum of money advanced on loan on a bond: laid at Company's rupees one hundred and fifty-three, annas seven, including interest, (Company's rupees 153-7.)

The papers of this case shew that the defendants borrowed on loan the sum of rupees one hundred from the plaintiff, on a bond dated the second day of Bysack 1250 B. S.; and, in consequence of their failing to liquidate the debt, the plaintiff instituted this suit, including interest.

The defendants, in their answer, deny the debt, and declare the bond to be a fabricated instrument.

The moonsiff decreed the case on the grounds set forth in his decision.

It was necessary for the moonsiff to have summoned and examined all the witnesses to the bond, previous to his deciding this case. His having omitted so to do, has left his decision of the case incomplete and unsatisfactory; hence I decree this appeal, and reverse the decision of the moonsiff passed on the 30th day of September 1847, and direct that the case be remanded to the said moonsiff for re-trial, with instructions to restore the case to its original number on his file, and, having supplied the omissions noticed in this decree, to re-try the case.

Costs to be paid by each party respectively for the present, and ultimately by the losing party. The value of stamp upon the petition of appeal to be refunded to the appellant.

THE 24TH APRIL 1848.

Case No. 290 of 1847.

Appeal from the decision of Pundit Sreeram Turkolunkar, Head Moonsiff of Hooghly, dated the 25th day of November 1847.

Ramchand Mookerjee, (Plaintiff,) Appellant,

versus

Agha Muhummud Kummul Tehranee, (Defendant,) Respondent.

SUIT for the recovery of a sum of money advanced on loan on a bond : laid at Company's rupees one hundred and forty-seven, four annas, three gundahs, one cowree, and one krant, including interest, (Company's rupees 147-4-3-1-1.)

The papers in this suit shew that the plaintiff sues the defendant for the sum of one hundred rupees, principal money, and for the sum of rupees forty-seven, annas four, gundahs five, cowree one, and krant one, on account of interest.

The defendant, in his answer, denies the debt, and states that the plaintiff was his, the defendant's, servant, in his, the defendant's, indigo factory; hence asks the defendant why should he have borrowed any money from him? On the contrary he, the plaintiff, had taken from, and received from the defendant one hundred rupees to purchase indigo for the defendant, giving at the same time an agreement to that effect; but that he, the plaintiff, not having returned the hundred rupees, nor given any indigo as agreed upon, the defendant instituted a suit under No. 124 for the recovery of the said one hundred rupees; and with a view to deprive him, the defendant, of the hundred rupees, the plaintiff anticipated him with this suit.

The head moonsiff dismissed the case on the grounds set forth in his decision. I do not see any sound reason on which to disturb the decision of the head moonsiff, Pundit Sreeram Turkolunkar, passed on the 25th of November 1847. I therefore dismiss this appeal with costs.

THE 24TH APRIL 1848.

Case No. 292 of 1847.

Appeal from the decision of Molvi Syud Israr Ali, Moonsiff of Keerpoy, dated the 30th day of November 1847.

Gooroopersaud Mundle, (Plaintiff,) Appellant,

versus

Kalleechurn Billoos Julleea and his son, Bhojohurree Billoos Julleea, (Defendants,) Respondents.

SUIT for the recovery of a sum of money advanced on loan on a bond, including interest : laid at Company's rupees fourteen, annas two, (Company's rupees 14-2.)

The papers in this case shew that the defendants borrowed on loan the sum of Company's rupees eleven, annas four, on a bond dated the 9th day of Maug 1251, B. S. from the plaintiff; and the defendants having failed to refund the amount so borrowed, the plaintiffs filed this suit for the recovery of the amount of the principal money, that is to say for eleven rupees, four annas, and for the sum of two rupees, fourteen annas, the amount of the interest.

The defendant, Kalleechurn Billoos Julleea, in his answer, denies the debt, and states that the plaintiff has from enmity instituted this suit against him, and against his, the defendant's, son, on the strength of a fabricated instrument.

The moonsiff dismissed the case, on the grounds that the bond filed by the plaintiff is evidently written with fresh ink on old paper, and that the persons, who give their evidence to prove the authenticity of the bond, are not residents of the neighbourhood where the transaction is said to have taken place. Moreover these witnesses are persons who are in the habit of giving evidence; and besides these points, it is proved by the evidence adduced by the respondents that enmity exists between the two parties. I do not see any sound reason on which to disturb the decision of the moonsiff of Keerpoy, passed on the 30th day of November 1847. I therefore dismiss this appeal with costs.

THE 26TH APRIL 1848.

Case No. 3 of 1847.

Appeal from the decision of Molvi Syud Oosman Ali, late Additional Principal Sudder Ameen of Hooghly, dated the 15th day of January 1847.

Kalachand Roy, Moheschunder Roy, Gungadhur Bhattacharje, and Sreedhur Bhattacharje, (Plaintiffs,) Appellants,

versus

Sheikh Abdoolla, son of the late Gholaum Hussein, merchant, deceased, Gungapersaud Gossein and Gopeekisto Gossein, sons of the late Rughoram Gossein, deceased, (Defendants,) Respondents.

CLAIM for wasilaut, or mesne profits, with interest: calculated at Company's rupees two thousand nine hundred and seventy-one, annas eleven, gundahs fifteen (Company's rupees 2,971-11-15.)

The plaint sets forth that twenty-four beegahs and seven cotahs of lakhiraj, rent-free land, situated within the villages Goorhuttee and Champdane, is the hereditary rent-free land belonging to the plaintiff, for which said land the former mokururree izaradar, by name Gholaum Hussein, merchant, filed a suit, alleging the land to be maul, rent paying, under No. 6,812, in the judge's court of this district, against one Panchanun Roy. This

said Panchanun Roy is the father of the plaintiff, Kalachand Roy, uncle of the plaintiff, Moheschunder Roy, and nephew to the maternal grandfather of the plaintiffs, Gungadhur Bhattacharje and Sreedhur Bhattacharje; and he, the said Gholaum Hussein, obtained a decree in his favor on the 3d day of December 1821, and he, the said Gholaum Hussein, received possession of the said land on the 24th day of Srabun 1229 B. S. That the abovementioned Panchanun Roy carried an appeal to the late Calcutta provincial court of appeal, under No. 135; but before the decision had been made on that appeal, the land in dispute was sold at auction, together with other property belonging to Sheikh Abdoollah for debt, by Messrs. Tulloh and Company, auctioneers in Calcutta, in the year 1230 B. S., and Rughooram Gossein purchased the disputed land, and filed a petition in the court of appeal, intimating that he had become the proprietor of the said land in dispute by purchase, and he, Rughooram Gossein, was in consequence made the respondent in the case. It appears that on the 31st day of May 1827, the court of appeal decreed the case, the land having been clearly proved to be lakhiraj, or rent-free; and Panchanun Roy received possession of the land, on the 29th day of Maug 1234 B. S. On this, Rughooram Gossein preferred a special appeal to the Court of Sudder Dewanny Adawlut, under No. 3293, and the decision which had been passed by the court of appeal was upheld by the Court of Sudder Dewanny, on the 8th day of August 1832. Under these circumstances, the plaintiffs instituted this suit for mesne profits during the time they were dispossessed of the land in dispute, that is to say from the year 1229 B. S. to the 29th day of Maug 1234 B. S., including interest.

The defendants, Gungapersaud Gossein and Gopeekisto Gossein, in their answer, declare that the suit is barred by the law of limitation, and consequently it cannot be admitted into a court of justice for trial, because the plaintiffs declare they received possession of property on the 29th day of Maug 1234 B. S., from which date to the date of the institution of this suit eighteen years had elapsed, and twelve years from the date of the decision passed by the Court of Sudder Dewanny Adawlut, and twenty-three years from the date from which the wasilaut, or mesne profits, is calculated; that the villages Goorhuttee, &c., were purchased in the year 1230 B. S., and the defendants received possession of them in the year 1231 B. S.; that the plaintiffs ought to have filed a separate suit against the former proprietors for the mesne profits of 1229 B. S. and 1230 B. S.: his not having done so is illegal; and those lands, the rent of which does not exceed one rupee, eight annas the beegah, the plaintiffs have calculated at an enhanced rate; and as the defendants have not caused any loss or damage, the plaintiffs have unjustly instituted the suit.

The additional principal sudder ameen, Molvi Syud Oosman Ali, dismissed the case on the ground that the suit was barred by the lapse of time.

The late additional principal sudder ameen, Syud Oosman Ali, dismissed the case on the ground that the suit was barred by the law of limitation ; but on an examination into the papers of this case, it appears that the suit was instituted within the period of twelve years, calculating from the date of the decision, passed by the Court of the Sudder Dewanny Adawlut on a special appeal, on the 8th day of August 1832, to the date of the institution of this suit on the 27th day of July 1844, I therefore decree this appeal, and reverse the decision of the late additional principal sudder ameen, passed on the 15th day of January 1847, and direct that the case be remanded to the principal sudder ameen, with instructions to restore the case to its original number on the file, and then re-try the case on its merits.

Costs for the present to be paid by each party respectively, and ultimately by the losing party. The value of the stamp upon the petition of appeal to be refunded to the appellaut.

THE 26TH APRIL 1848.

Case No. 8 of 1847.

Appeal from the decision of Molvi Syud Oosman Ali, late Additional Principal Sudder Ameen of Hooghly, dated the 13th day of May 1847.

Oomapersaud Shome, (Defendant,) Appellant,

versus

Manickchunder Shome and Kalachand Shome, (Plaintiffs,) Respondents.

SUIT for damages for defamation of character : laid at Company's rupees two hundred.

The plaint sets forth that on the 20th day of Joystee 1251 B. S., the defendant, Oomapersaud Shome, with others, entered the residence of the plaintiff, used abusive language to the female inmates of it, and beat and maltreated the plaintiff, Manickchunder Shome, in consequence of which the plaintiff filed a suit for the sum of three thousand rupees for defamation of character against the defendant.

The defendant denies the statement made by the plaintiffs ; and declares, in his answer, that in execution of a decree, No. 128, passed in his favor, the plaintiff, Manickchunder Shome, was apprehended and arrested by a peedah, when Manickchunder Shome by force extricated himself and absconded ; and, with the view to deprive the defendant of the amount decreed in his favor, anticipated him by this action.

The late additional principal sudder ameen, Molvi Mynooddeen Sufder, decreed this case on the 10th day of July 1845, as laid in the plaint, but ordered the appellant to pay the sum of three hundred rupees with costs of suit.

On appeal by the defendant, the case was remanded for re-trial, on the 29th day of July 1846 to the late additional principal sudder ameen, in consequence of the late additional principal sudder ameen, Molvi Mynooddeen Sufder, not having assigned his reasons for reducing the sum decreed for defamation of character. Besides, on a reference to the fird-i-rai, (affixed to the original nuthee,) of the late additional principal sudder ameen, Molvi Mynooddeen Sufder, written in the Persian language in the hand writing of Molvi Mynooddeen Sufder, late additional principal sudder ameen, with his, that is to say Molvi Mynooddeen Sufder's signature affixed, it appears it, that is to say the fird-i-rai, does not tally with the Bengallee fysullah of the case, also bearing the signature of the late additional principal sudder ameen, Molvi Mynooddeen Sufder.

The late additional principal sudder ameen, Molvi Syud Oosman Ali, decreed the case to the extent of two hundred rupees with costs in favor of the plaintiff, on the grounds set forth in his decision. I see no sound reason on which to disturb the decision of the late principal sudder ameen, Syud Oosman Ali, passed on the 13th day of May 1847, I therefore dismiss this appeal with costs.

THE 26TH APRIL 1848.

Case No. 165 of 1847.

Appeal from the decision of Baboo Denonauth Bose, Moonsiff of Dwarhutta, dated the 12th day of July 1847.

Ramdhonc Mannah, Ramissur Mannah, Ramcoomar Mannah, and Shagore Mannah, (Defendants,) Appellants,

versus

Ramchand Bhor, (Plaintiff,) Respondent.

SUIT for the recovery of a sum of money advanced on loan on a bond : laid at Company's rupees twenty-eight, annas thirteen, gundahs ten, including interest, (Company's rupees 28-13-10.)

The plaint sets forth, that the defendants, on the 9th day of Assar 1251 B. S., borrowed on loan from the plaintiff the sum of rupees twenty-one on a bond ; the defendants not having liquidated the debt due, the plaintiff instituted this suit against them including interest.

The defendants, in their answer, deny the debt, and declare that the plaintiff has sued them from enmity on the strength of a fabricated instrument. The defendant, Rammissur Mannah, further declares that previous to the date of the bond he went on a pil-

grimage, on the 20th day of Joystee 1251 B. S., and returned on the 24th day of Assar 1251 B. S.; hence it was not possible that he could have signed a bond, on the 9th day of Assar 1251 B. S., to the plaintiff.

The moonsiff decreed the case on the grounds set forth in his decision.

On the perusal of all the papers in this case, it appears that of the witnesses produced by the respondent to prove his claim, two of them cannot either read or write, and were unable to prove the authenticity of the bond filed by the respondent; and the one witness who can read and write, does not know any thing regarding this transaction. Moreover, it is proved by the witnesses produced by the appellants that Rammissur Mannah was not at home, but was on a pilgrimage on the day on which the bond is dated. Hence I decree this appeal, and reverse the decision of the moonsiff of Dwarhutta, passed on the 12th day of July 1847. All costs of both courts to be paid by the respondent.

ZILLAH JESSORE.

PRESENT: H. F. JAMES, Esq., JUDGE.

THE 5TH APRIL 1848.

CASE NO. 58 OF 1846.

Regular Appeal from the decision of Moulvee Lootf Hosein, First Principal Sudder Ameen, dated 25th July 1846.

Mutoornath Mookerjee and four others, (Defendants,) Appellants,
versus

Mudosooodun Dutt, Doorgachurn Dutt, and Bemcla Dassiah,
(Plaintiffs,) Respondents.

CLAIM rupees 4,901 : to set aside an award under Act IV. of 1840, and to get possession of a julkur, including mesne profits.

This case was instituted by the plaintiffs in the first principal sudder ameen's court, to upset the order in a case, under Act IV. of 1840, decided by the joint magistrate of this zillah. A dispute arose regarding the right of fishery in a certain bheel in Burra Semecla, a talook belonging to Mutoornath Mookerjee, in 1840; and by the summary investigation possession was given to Mutoornath. The plaintiffs, to establish their claim to the bheel in question, gave into court the kubooleuts of the ryots, their own zemindaree accounts, and a report of a thannah jemadar of 1840, and the measurement papers of the lands of 1226 B. S., and some proceedings of the collector of Nuddea; and the defendants by documents of the same nature endeavoured to prove their right to the subject in dispute; but the case was decreed in favor of the plaintiffs by the first principal sudder ameen.

The appellants, in their petition of appeal to this court, impugn the decision of the lower court, and declare it to be incomplete without a local investigation, and deny the authenticity of the documents on which it is founded. They state that the map which the police made, when they visited the spot, does not clearly demonstrate that the bheel was actually in the possession of the respondents as assumed by the lower court, and that the documents, such as the kubooleuts of the ryots, were declared by a former

judge to have been fabricated, and were discarded as worthless when the case under Act IV. of 1840 was heard in appeal by the sessions judge; and that when the parties attempted at one time to settle the dispute between them by arbitration, the bheel was equally divided between them. Moreover, that they, the appellants, hold papers and proofs in their own hands that they have been in possession of the bheel from the year 1207.

On the case coming before me, my attention was directed to the papers filed by the respondents, such as the police report and the agreements from the ryuts, who, both parties agreed, were the persons who had held the fisheries of the bheel; and I saw no reason to doubt the correctness of the one, which certainly bore out the justness of the decision of the lower court, nor the authenticity of the other documents.

This much I intimated to the vakeels on the case coming before me on a former occasion. The parties, however, on the 31st of last month filed a deed of adjustment, which, on examining in the presence of the vakeels of both parties, I have approved of. The boundaries are therein laid down between the estates of the two parties, and the possession of the bheel remains with the respondents.

THE 5TH APRIL 1848.

Case No. 59 of 1846.

Regular Appeal from the decision of Baboo Loknath Bose, Second Principal Sudder Ameen, dated 12th August 1846.

Muddun Mohun Moonshee, Radha Churn Moonshee, and Nittanand Moonshee, (Plaintiffs,) Appellants,

versus

Syed Keramut Allee, the manager of a trust estate, and four others, (Defendants,) Respondents.

CLAIM, rupees 1,589-7, the amount of surplus rent including penalties.

This suit was instituted by the plaintiffs to recover a certain sum, which they had paid in excess of their regular jumma to the defendants. The plaintiffs state that they held in the trust estate, of which Syed Keramut Allee was the manager, certain lands at an annual rental of rupees 218-0-0-18; and that the defendants, from the year of 1238 to 1242, collected from the ryuts by their own people a large share of the rent, which was never carried to

their account. The years 1241 and 1242 being the only years coming within the rule of limitation, this suit was instituted to recover the money paid in those years, viz. in 1241 the sum of rupees 429-12 from the ryuts, and in 1242 the sum of rupees 285 from the ryuts, and from the plaintiffs rupees 218-18; in all rupees 932-12-18; and deducting therefrom the rent due for the two years in question, the excess received by the defendants amounts to Sicca rupees 496-11-2, or Company's rupees 529-13, and penalties, in all rupees 1,589-7. The plaintiffs produced in court the receipts they had received from the manager, and also the receipts the ryuts had obtained; but the principal sudder ameen declined to put faith in all these receipts, and called upon the manager to file the original accounts in his office regarding the collection of rents for the land in question; and on examining these it was apparent that the manager had received for the rent of 1241, a surplus of rupees 61-15-2, over the authorized rental for the lands in question, and that there was a deficiency in the collection of rupees 5-6-3 for the year 1242; and deducting the deficiency of the one year from the surplus of the other, the accounts showed an excess of collections rupees 56-8-19, and this sum with interest was decreed in favor of the plaintiffs.

This order is appealed against; and the appellants in their petition wish to persuade the court that the receipts which were rejected by the lower court are all true and genuine, and that what the principal sudder ameen says regarding them, viz. that the paper on which they are written appears to be old, whereas the writing has the appearance of being of recent date, is merely a conjecture on his part, and is not borne out by the appearance of the receipts; and, secondly, that the discrepancies and contradictions on the part of the witnesses, regarding the authenticity of these documents, arose at the time of their examination, not from their inability to speak to the genuineness of the receipts, but from their mental excitement on being brought into a court of justice; and, thirdly, that the point mentioned by the principal sudder ameen, regarding the signature of one Debnarain, which appear on the receipts and on a separate bond filed with the papers of the case not bearing any similarity, is incorrect; and, fourthly, that the accounts which the respondents filed before the lower court are not to be trusted.

I examined the receipts carefully, and from their appearance I decline to put faith in them. The paper appears very old, and the ink and writing very fresh, and from reading over the examination of the witnesses, which were called to prove them, it is impossible to reconcile the contradictory statements given by each; nor is it easy to comprehend why the man who signed these documents should one day sign his name Debnarain, and another Debnath;

and, agreeing with the principal sudder ameen in the general correctness of the accounts furnished by the respondents, I confirm his decree and order the appellants to pay the costs of the appeal.

THE 5TH APRIL 1848.

Case No. 60 of 1846.

Regular Appeal from the decision of Moulvee Looft. Hossein, First Principal Sudder Ameen, dated 7th September 1846.

Joichand Chunder and Neel Madub Chunder, (Plaintiffs,) Appellants,

versus

Pitumber Bagchee, Sunkaree Dibbeah, and Govindchunder Ghose, (Defendants,) Respondents.

CLAIM rupces 530-3-3, due on a bond with interest.

The plaintiffs set forth, that on 7th Jeit 1247 the defendants borrowed from them 312 rupees and signed a bond to that effect, and promised to repay them in Falgoon of the same year; but in this they failed, and therefore they were obliged to bring the matter into court.

The defendants, in their reply, deny having executed the bond and the receipt of the money, and attribute the institution of the false case to the enmity of the plaintiffs towards them, and point out the improbability of the three defendants joining together to effect a loan if required, since they were connected by neither blood, caste, nor profession.

The principal sudder ameen considers that the bond is a forgery; and, as one reason for supposing so, he says that the signatures of the defendants on the bond, and those on the power of attorney given in by them, do not tally. This may be readily explained. In addition to this, however, he states that copies of papers obtained from the magistrate's office have been filed with the case, which establish the fact of a long existing animosity between the parties, which, while it increases the improbability of any money transactions occurring between the parties, furnishes a cause for the institution of such a case, a custom of feeding revenge which I regret to observe is very common in this district.

The appellants must pay the costs of this appeal; and I am unable to look at this bond, the cause of action in this suit, in a more favorable light than the principal sudder ameen did, whose order is confirmed.

THE 5TH APRIL 1848.

Case No. 62 of 1846.

Regular Appeal from the decision of Baboo Loknath Bose, Second Principal Sudder Ameen, dated 28th August 1846.

Nuseema Beebee, (Defendant,) Appellant,
versus

Rajah Burdakant Roy, (Plaintiff,) Respondent.

CLAIM, 1,897 rupees, to establish the right of possession to certain lands.

This suit was instituted on the part of the plaintiff in the lower court, who states in his plaint that belonging to his zemindaree, and attached to a place called Turafah Nultah, was a great bheel; which went by the name of Buttoolah Tallah; that it had always been in his possession, and that he had always received the rents of the fisheries connected with it; but that in the year 1242, the defendant, Nuseema Beebee, laying claim to the said bheel, had prosecuted two of her ryuts for arrears of rent due for the said bheel, representing, at the time, that the bheel belonged to a putnee talook named Mehindee in her possession, and that she had obtained a decree in her favor against the two ryuts; and that to strengthen her assumed and false title to the bheel, she induced the ryuts to listen to a fraudulent proposal of hers to settle the case between them, by her filing a deed of adjustment, in which they acknowledged her right to the bheel in question, and declared themselves her ryuts at will on the property. The defendant then again prosecuted these ryuts for arrears of rent, founding her claim to the same on the abovementioned bond of adjustment, and got decrees out against them for rupees 383-10; and to realise this amount, the gantee jummahs in bheel Buttoolah Tallah of these ryuts, were advertised for sale; and on these advertisements appearing, the plaintiff filed a petition objecting to, and denying the right of these ryuts to the bheel; but to realise the decree of one Bhugwanchunder Bose, the gantee jummahs in question were eventually sold by auction, and purchased by one Gorachand on 4th Bhadoor 1252, who was made a defendant in this suit. The suit was decreed in favor of plaintiff, on the grounds that the documents filed in the case clearly establish the fact of the land belonging to Turafah Nultah, pergunnah Mullye. The plaintiff produced a copy of a petition presented to the moonsiff of Tallah by Bhugwan Bose, in Sabun 1246, in which it was stated that the right of the bheel was vested in the zemindar of Turafah Nultah, pergunnah Mullye, and a decision of the said moonsiff corroborated this point; and from the report of an ameen, dated 1249, it is apparent that possession of the bheel in dispute was given over to Rajah Burdakant, the plaintiff in this case, with certain lands belonging to pergunnah Mullye,

and an agreement was at that time taken from the ryuts, who held the fisheries of the bheel, to pay the rent of the same to the rajah; and, at that time, there is no proof that the defendant attempted to claim any right in the property; and the principal sudder ameen declares the proceedings of the defendant, with reference to the cases brought against the ryuts and their deed of adjustment (solahnamah), to have been fraudulent, and carried through with the intention of depriving the rightful owner of the property, and the case of the defendant he states is quite unsupported by any satisfactory proof whatsoever.

In appeal it is urged by the appellant, that the second principal sudder ameen has laid too much stress on certain papers filed by the respondent, which are deficient in details, and which contain no authenticated measurements by which the bheel is defined and declared to belong to the lands of the respondent; and that the papers in the case of Bhugwanchunder, the decreedar, clearly prove the appellant's right, and that these papers have been rejected *in toto* by the lower court; and that the ameen's report, quoted by the second principal sudder ameen, is scarcely deserving of any weight, as in the case in which possession was given to the respondent, the appellant was not a party. Moreover, that there is no proof of the fraudulency of the transactions and dealings between the appellant and Bhugwanchunder and the ryuts.

The papers of the case filed by the respondent, in my opinion, are most valid documents. They are of old date, but they have every appearance of truth. They are the agreements of the ryuts who were in possession, acknowledging their holding the fisheries under the rajah; and the ameen's report of 1249 is deserving of great consideration, as it establishes the rajah's possession so far back as that year, and this report is duly authenticated; whereas in the pottah of the putnee talook, by which the appellant rests her claim, the bheel is not distinctly mentioned, though the adjoining lands are. I see no reason whatever to interfere with this decision, and the appellant is ordered to pay the costs.

THE 5TH APRIL 1848.

Case No. 63 of 1846.

Regular Appeal from the decision of Baboo Loknath Bose, Second Principal Sudder Ameen, dated 8th September 1846.

Anand Moy Dassiah, (Plaintiff,) Appellant,

versus

Poddomoney Dassiah, after her death, her heirs, Baboo Gooroodoss Roy, Ramrungeenee Dassiah, and Umbica Dassiah, (Defendants,) Respondents.

CLAIM, rupees 364 15-2, to set aside a summary decree. *

The plaintiff stated that her husband, Mohunchunder Mojoomdar, held a jumma called Dibakee Nundanpore, &c., at a yearly rent of rupees 322-2-6, and that he was the sole proprietor, and that he paid the rent to Poddomoney Dassiah; and that though she holds receipts for the rent of 1250, Poddomoney sued her husband and included also Umbica Dassiah as a party in the suit and obtained a decree for the rent of 1250; and that since her husband is missing, and has not been heard of for some years, she has come forward to get this summary decree upset.

But the second principal sudder ameen declines, after the answer of the defendants has been filed, to investigate into the case, for since the plaintiff states that her husband and son were made away with by one of the defendants, Gooroodoss Roy, yet that this statement is unsupported by the papers from the magistrate's office; and that though the plaintiff declares that her husband was the only one concerned in the jumma, the defendants prove that he had acknowledged a partner, and that the receipts produced by the plaintiff are unworthy of credit in the opinion of the second principal sudder ameen; and since the wife is unable to prove her right to institute the case, until the death of her husband is established, he dismissed the case. In this last point I agree with the lower court, and uphold the decision, and order the costs to be paid by the appellant.

THE 20TH APRIL 1848.

Case No. 64 of 1846.

Regular Appeal from the decision of Moulvee Loutf Hossein, First Principal Sudder Ameen, dated 27th August 1846.

Ramdhun Buxee and three others, (Defendants,) Appellants,

versus

Koroona Moy Dibbeah, Taramonee Dibbeah, and Poddomoney Dibbeah, (Plaintiffs,) Respondents.

CLAIM, rupees 1,652-12-6.

This suit was instituted on the part of the plaintiffs to recover possession of their share of an estate, the whole of which had been, under Regulation VIII. 1819, Section 13, made over by the collector to other shareholders of the estate, with wasilat and interest thereon. It appears from the representation of the plaintiffs that there were many shareholders of an estate called Pertabkatee, and this estate, falling into arrears for Government revenue, was advertised for sale; and to save it from sale, the defendants, who were

sharers of the property, paid into the collector's office some rupees 280-2-8, and obtained possession under certain restrictions of the property. After which the plaintiffs, who are native ladies, being unable to get possession of the property and unwilling to trouble themselves with a law suit, sold their right in the property to one Puchanund Bose, with the understanding that they (the plaintiffs) were to bring an action for the possession of the property, and to make over to the purchaser whatever was decreed in their favor.

The defendants, in their reply to the plaint, admit that the plaintiffs were joint sharers with them in the estate, but deny the power of any shareholders to sell or dispose of their parts or share to any other than a shareholder. This agreement it is stated is of old standing, and that the plaintiffs are their debtors to the amount of rupees 1,203-3-7 for revenue paid to Government from the year 1245 to 1252; and that until this amount is liquidated, possession cannot be decreed to the plaintiffs. The principal sudder ameen, in his decision, says that the disposal of the property, or rather of the share of the property which the plaintiffs claim, is not a point requiring his investigation or concern. The matter for enquiry is whether the plaintiffs are legally entitled to any share in the estate of Pertabkatee, and whether the law by which the defendants got possession by the order of the collector is valid in this instance or not; and he records his opinion that this Regulation, which refers to putnee talooks of the nature of the property in dispute, only gives temporary possession to the parties that make the deposit to stay the sale of the estate, and that it does not deprive another party from obtaining possession of their share when their right to the same is established in court; and as the right of the plaintiffs is proved, he decrees possession to them and wasilat, after deducting the yearly Government rent and the expenses of the mofussil collections reckoned at 5 per cent, with interest on the amount and costs of the suit, to be paid by the defendants. Against this order the defendants, in appeal, petitioned this court, and in their petition point to two specific matters for redress. The first is that the lower court has decreed the costs of the suit against the defendants; and, secondly, that it has only allowed the defendants 5 per cent. for the expenses of collection. The first point I see no reason to alter or interfere with. The respondents deserve to be reimbursed for the expenses they were at in regaining their property, since the appellants declined to give possession without the case being instituted, to which extremity the respondents were unwilling to resort, which is proved by a petition presented by them to the collector; but, in the matter of expenses of collection, I sanction a deduction, or an allowance of 10 per cent. The costs of the appeal to be equally divided between the parties.

THE 20TH APRIL 1848.

Case No. 65 of 1846.

Regular Appeal from the decision of Baboo Loknath Bose, Second Principal Sudder Ameen, dated 2d July 1846.

Rye Money Dassiah, pauper, (Plaintiff,) Appellant,
versus

Moddo Moy Dassiah and seven others, (Defendants,) Respondents.

CLAIM rupees 801-10, for possession of a jumma with mesue profits and interest, and for the value of certain plundered property.

This suit was brought by the plaintiff, who describes herself as a widow and a pauper; and who states that, in consequence of her helpless state, she was greatly oppressed by the defendants, who turned her out of her house and home, plundered her property, and dispossessed her of certain lands. At the time of the outrage, she complained to the police authorities, who apprehended the defendants and fined them heavily; but that she was not put in possession of her land, which she now sues to recover with the advantages which the other party has reaped during the time they held possession of it. The plaintiff, by respectable witnesses, establishes the fact of the outrage to which she was exposed, and by copies of papers from the magistrate's court proves that her story is true, and that she has suffered much, though not to the extent she represents. The defendants have failed to file any reply to the suit. The principal sudder ameen therefore decrees possession of the land, and wasilat at the rate of 10 rupees a year from the date of her regaining possession, and fixes the value of the property proved to have been plundered at 60 rupees, 8 annas.

From this order the plaintiff appeals, and states that though property to a large amount is proved to have been carried away, yet that 60 rupees, 8 annas is the amount decreed by the lower court, which is poor satisfaction to her after all she has suffered. On looking over the papers and reading the depositions of the witnesses, I am inclined to agree in the amount fixed by the lower court as the value of the plundered property, and see no reason to interfere with the order of the second principal sudder ameen. The costs to be paid by the appellant.

THE 20TH APRIL 1848.

Case No. 68 of 1846.

Regular Appeal from the decision of Baboo Loknath Bose, Second Principal Sudder Ameen, dated 19th November 1846.

Burdeikunt Bose, (Plaintiff,) Appellant,
versus

Essarchunder Paul Chowdree and four others, (Defendants,) Respondents.

CLAIM rupees 1,502-15-6-2, possession of a gantee jumma with mesue profits.

The plaintiff stated that, in two villages, named Shikarpore and Pikeparrah, in pergunnah Bhaugmarrah, his father held an hereditary jote, at an annual rent of rupees 118-8, and that the defendants ousted him from the lands in 1226 B., in the month of Srabun, and that in consequence of his poverty and want of funds his father was unable to institute a suit for the recovery of the same. In the year 1235 B., (corresponding with 1828) his father died, and that at that time the plaintiff was only one year, seven month's old, and that his only brother was not more than two months ; and that as he has now come of age, he brings this suit to recover his hereditary property.

The defendants allow that the father of the plaintiff, Bewanee Shunker, held a jummah as stated by the plaintiff ; but say that it was forfeited in consequence of his absconding, and that the zemindar usurped all right and power in it ; and that in the year 1225, let it out in farm to one of the defendants for ten years ; and that at the expiration of the lease a new arrangement was made regarding the land, by which Golam Shereef became the proprietor in perpetuity, and that at his death the property fell into the hands of his widow, who defends the action ; and who, in consequence of being dispossessed by the zemindar, was forced into the court to recover the property, and had it decreed in her favor on the 19th November 1847.

The principal sudder ameen dismissed this case, as the cause of action arose twelve years before a suit was commenced ; and the plaintiff is unable by documentary evidence or by witnesses to prove that his minority precluded him from bringing any action before.

In appeal, the appellant directs my attention to the *junum puttro* filed by him, in which his age could be ascertained, but in this document I put no faith. It bears no official signature, and appears to have been fabricated recently ; and as it appears from the pottah of Ibraheem, who held undisputed possession of the lands for ten years, that the appellant's father gave up the land of his own accord, I confirm the order, and costs to be charged to the appellant.

ZILLAH MIDNAPORE.

PRESENT: H. T. RAIKES, Esq., JUDGE.

THE 5TH APRIL 1848.

Case No. 1 of 1848.

Appeal from a decision of Mr. Mackay, Principal Sudder Ameen of this Zillah, passed the 4th December 1847.

Tarapersaud Paul, (Defendant,) Appellant,

versus

Tarapersaud Bhooya, (Plaintiff,) Respondent.

THE respondent, Tarapersaud Bhooya, instituted a suit against the appellant and others for possession of certain lands which he alleged had been mortgaged to him by the co-defendants of appellant, and for which he had procured an order for foreclosure under Regulation XVII. of 1806, and was about to sue regularly for possession, when the lands were sold in satisfaction of a decree given against the mortgagers, and the property purchased by the appellant. The principal sudder ameen gave a decree in favor of the plaintiff for possession of the lands, and the decree was confirmed by the judge; but a special appeal was preferred to the Sudder by the appellant, and the application granted on the 13th of June 1846 (See Decisions of the Sudder Court for June 1846, page 224). The Sudder directed that the case should be returned to the principal sudder ameen, with instructions to require from the appellant any proof, documentary and oral, he might have to produce in support of his allegation that the plaintiff and the mortgagers have acted collusively.

Agreeably to this order, the case was re-filed in the principal sudder ameen's court, and the appellant called upon for his proof. The principal sudder ameen now observes that "beyond the testimony of six witnesses, (naming them,) the said Tarapersaud Paul has not adduced the slightest satisfactory documentary proof, in the absence of which I do not consider it safe to trust to such evidence alone." The principal sudder ameen also refers to a glaring inconsistency between the evidence of these witnesses and the facts before him; namely, that these witnesses

assert they overheard the plaintiff and the mortgagers consulting together, how they should prevent the sale of the lands in satisfaction of the decree held by Goorooopersaud, in the month of Falgoon 1244, whereas the cause of that action, as alleged by Goorooopersaud in his pleadings, did not arise till seven months after the date on which this conversation is stated to have taken place. The principal sudder ameen, therefore, relying on the evidence on the part of the plaintiff, and the acknowledgment of the mortgagers, believed the engagement between them to have been made in good faith, and decreed to the former possession of the lands.

The appellant now urges in his appeal that two of his principal witnesses were not examined by the lower court, though they presented themselves; that these parties could have proved the allegations of the appellant, and have established to the court's satisfaction the collusive nature of the arrangement between the plaintiff and the mortgagers; that the principal sudder ameen had decided the suit on the evidence of witnesses who had never been examined in this case, only copies of their depositions taken in another case having been filed by the plaintiff. The appellant, therefore, urged that he had not had an opportunity of proving his cause.

JUDGMENT.

This case was remanded to give the appellant an opportunity of proving his assertion that a sham, or collusive mortgage, had been arranged between the plaintiff and the mortgagers of an estate he had purchased at auction, to prevent a sale of the lands in satisfaction of a decree.

The appellant complains that a decision has been given against him without his having an opportunity of cross-examining the plaintiff's witnesses, and that the lower court has taken no measures to procure for him the evidence of his principal witnesses.

As I find that *copies* of the evidence of witnesses, who were examined in the *decree-jarree* case to which the appellant was not a party, have been filed as evidence in this suit and so received, without any reason being assigned for such a proceeding, and that a decree for the plaintiff has been given on the facts recorded in these papers, I deem the enquiry incomplete, and the admission of such evidence contrary to the general mode of procedure* in

* Vide Decisions of the Sudder Court for May 1847, page 150.

Musst. Gowre Kour

versus

Cheonee Lall.

courts of first instance, where the depositions of the witnesses should be taken in the presence of both parties or their vakeels, and the vakeels be allowed to examine them. I therefore reverse the decision of the principal sudder ameen, and return this case that he may take the evidence of the plaintiff's witnesses in the presence of both parties, and also summon the witnesses of the appellant, whose evidence he alleges is necessary to complete his case.

THE 13TH APRIL 1848.

Case No. 31 of 1848.

Appeal from a decision of Mr. C. Mackay, Principal Sudder Ameen of this Zillah, passed on the 27th January 1848.

Gungānarain Poddar, (Defendant,) Appellant,

versus

Premchand Panda, (Plaintiff,) Respondent.

THE respondent instituted this suit for possession of 6 beegahs, 1½ cottahs of land, including a tank, and for the amount of rent thereof for the years 1247 and 1248 Umlee, claiming the land as part of his talook, of which the defendant had dispossessed him under the plea of its being his rent-free land.

The principal sudder ameen states, in his decision, that the points to be decided are, whether the land is rent-free or not, and, if not, whether plaintiffs are entitled to demand and assess rent thereon as per nerik of the pergunnah. These points he decided in favor of the plaintiff.

Although the plaintiff sues for possession of the land and for back rents, yet there is no doubt the object is, as stated by the principal sudder ameen, to resume the land held by the defendant as rent-free; but when the principal sudder ameen ruled that this was the point at issue, I am surprised he did not see the necessity of requiring a report from the collector as directed by Section 30, Regulation II. of 1819.

No reason is given for this omission; but as such report is essential to the disposal of the case, I remand the suit to the principal sudder ameen that he may act in accordance with these remarks and then decide the case. The stamp fees to be returned to appellant.

THE 26TH APRIL 1848.

Case No. 51 of 1848.

Regular Appeal from a decision of Mr. C. Mackay, Principal Sudder Ameen of this Zillah, passed on the 25th February 1848.

Juggutchunder and Hurischunder Mookerjea, (Defendants,) Appellants,

versus

Samah Soondree, (Plaintiff,) Respondent.

THE plaintiff, Samah Soondree, and the defendants, are co-shareholders in two estates; and she instituted this suit to recover from them the sum of 1,549 rupees, amount of arrears of Government revenue, paid by her, on their account, to save their joint estates from public sale. She subsequently excluded from her claim

some of the shareholders; and the principal sudder ameen, after disallowing 150 rupees, stated by her to be discount paid for the loan of the money, decreed against the two appellants for 1,370 rupees, as arrears actually paid by her into the Government treasury.

In the decision the principal sudder ameen states, the question at issue to be this :—“ were any arrears of revenue due by the defendant for the 1 anna, 12 gundahs’ share of the estates for the period comprised in the plaintiff’s claim, and, if so, the amount thereof, and by whom liquidated?” The judgment of the lower court against the appellants is then recorded on the following grounds—that during the period in question, that is from Bysack till the kist of Poos 1250, 1,746 rupees were demandable for the 1 anna, 12 gundahs’ shares of the two estates held by the appellants, but they only paid 376 rupees; and the plaintiff proved by two dakhilas filed in court that she had paid 1,370 rupees in excess of her own share.

The appellants urge, in appeal, that the principal sudder ameen has entirely overlooked the fact stated by them, that they were not in possession of the share they now hold when some of the kists fell due for which the principal sudder ameen has adjudged them liable. They are the purchasers of 1 anna 12 gundahs out of 4 annas 16 gundahs held by Sreenath Mullick in the two estates. They became proprietors to that extent at a sale in execution of a decree on the 27th April 1843, but were not put in possession of the fractional part of the share till after the revenue quarter, ending the 28th September 1843, consequently they cannot hold themselves liable to for any balance up to that date, had any existed; but they were prepared to show that Sreenath Mullick, the former shareholder, had liquidated all dues on the 4 annas 16 gundahs’ share up to that time; and that the arrears paid up by the plaintiff accrued during the *last* revenue quarter ending 28th December 1843, during which period their instalments only amounted to rupees 1,014-7, of this it was admitted they had liquidated 376 rupees; how then could they be liable for the whole sum decreed against them?

I observe that none of the allegations urged by the appellants are alluded to by the principal sudder ameen in his judgment. He appears to have calculated the amount of revenue demandable from the holders of a 1 anna 12 gundahs’ share in the two estates during the period he has reviewed, that is from Bysack to Poos 1250; and finding it was 1,746 rupees, and that the appellants had only paid up 376 rupees, he argues that some person must have given the difference to save the estates from sale, and deeming it proved by the revenue receipts that plaintiff had paid in these arrears, he passes over in silence the pleas urged by the appellant, and directs them to make good the whole amount as the defaulting parties. Now, it is very clear from the statements of both parties,

that the arrears for which this action is brought must have accrued *on the collector's books*, during the last quarter of the year, that is, between the 28th September and the 28th December 1843. The revenue receipts of the plaintiff also prove this. I am therefore at a loss to discover on what data the principal sudder ameen declares the appellants liable for arrears of a *previous* quarter, which are not shewn by her exhibits to have been liquidated by the plaintiff. The appellants moreover urge that they were not in possession when these kists fell due, and that they were covered by surplus payments previously made by Sreenath Mullick on account of the whole (4 annas 16 gundahs) share held by him.

The truth of the matter appears to me to be this. Sreenath Mullick having paid in certain sums on account of his 4 annas 16 gundahs' shares in the two estates, those sums were unreservedly credited by the collector to any balance then due on the joint estates. After the sale of the 1 anna 12 gundahs' portion of his share, Sreenath Mullick privately (viz. in his private account) credited those payments to the sole account of his remaining share in the property, now reduced to 3 annas and 4 gundahs, leaving the 1 anna and 12 gundahs out of his accounts. Thus a nominal balance accrued on this fractional portion in the private accounts of the shareholders from the date of sale, which Sreenath did not intend to pay because it was sold, and the appellants did not liquidate because they were not in possession. This balance however did not endanger the property or render it liable to sale at that time, because the surplus payments of the shareholders were carried to account by the collector for the general benefit of the joint estates; but in the last quarter the estates fell into arrears, which the plaintiff paid up, and part of these the appellants cannot and do not object to pay.

Then it would appear the question arises, whether these arrears are recoverable from the appellants as from the date of their purchase, or a part only, as from the date of possession. That is, whether the surplus payments made by Sreenath Mullick previous to the appellants' purchase and possession, should be considered as payments solely on account of the 3 annas 4 gundahs, or of the whole 4 annas 16 gundahs; as urged by the appellants, and the balance of the last quarter paid by plaintiff be levied from such of the general shareholders as were then in arrears. As these points were distinctly urged by the appellants in their reply before the lower court, but have not been enquired into by the principal sudder ameen, I consider the investigation incomplete and return the case for a further hearing. The appellants are entitled to receive back the stamp fees, and the principal sudder ameen will re-file the suit on its original number in his court.

ZILLAH MOORSBEDABAD.

PRESENT : H. P. RUSSELL, ESQ., JUDGE.

THE 30TH MARCH 1848.

No. 22 of 1848.

*Regular Appeal from the decision of Baboo Gooroopersaud Bose,
Moonsiff of Kandhee, dated the 31st December 1847.*

Manikchand Adheecarree, (Plaintiff,) Appellant,

versus

Bishennath Mundul, (Defendant,) Respondent.

Rupees 29-12-8-1. Bond.

THE plaintiff sued to recover the sum of rupees 21, lent on a bond bearing date 22d Bysack 1251 B. S., with interest.

The defendant, in reply to the suit, denied having executed any such document, and pleaded that as he could write he would have affixed his signature to the instrument, and not a mere mark, which it bears opposite his name, that plaintiff had been for some years desirous of getting possession of his (defendant's) birmutter land, and instituted the suit through spite.

In deciding the suit the moonsiff gave judgment against the plaintiff, on the following grounds: that in the plaint the money was said to have been lent on the 21st Bysack, whereas the bond bare date the 22d of that month; that the two witnesses, who deposed to its execution, could neither read nor write; that the writer of it was dead; and that the witnesses said there were five attesting witnesses, whereas the bond bare the names of six; and that the evidence to the defence spoke to the existence of a quarrel between the parties prior to the date of the bond.

The moonsiff has been too hasty in dismissing the plaintiff's claim. It is true that the two witnesses examined as to the bond can neither read nor write, and that the writer of it, a nephew of the plaintiff, is said to have demised. The plaintiff, however, in reply to the defendant's

objection, as to the date of the bond as mentioned in the plaint, urges that it was a clerical error, and there are four more witnesses to the instrument, whose evidence is available. I consider therefore that the moonsiff's investigation is incomplete, and I accordingly return the case for re-trial.

The usual order will issue as regards the return of the amount of the stamp on which the petition of appeal is engrossed.

THE 30TH MARCH 1848.

No. 24 of 1848.

*Regular Appeal from the decision of Baboo Goorooopersaud Bose,
Moonsiff of Kandihee, dated the 31st January 1848.*

Sheikh Burkut Ollah, (Plaintiff,) Appellant,

versus

Dwarkanath Pandey, Gunganarain Pandey, and Rogoonath Pandey,
(Defendants,) Respondents.

Rupees 42. Rice.

THE plaint sets forth that, on the 1st Srawon 1253, the defendants, Dwarkanath Pandey and Gunganarain Pandey, and their brother, the late Dunnunjae, father of the defendant, Rogoonath Pandey, borrowed of the plaintiff the sum of rupees 25, to be repaid in the month of Agrahun in rice, at the rate of 21 arrees for 1 rupee. The defendant having failed to fulfil his engagement, the plaintiff brought his action at 21 arrees to the rupee, being 1 powtee, 10 bees, 5 arrees, saleable in Assar 1254 at 13½ arrees for the Rupee, ... Rs. 39 10 0

Interest, „ 2 6 10

Rs. 42 0 10.

The defendants having neglected to defend the suit, the moonsiff gave a decree in the plaintiff's favor for the amount of the money lent on the bond, with interest, saying that, of the two witnesses examined to its execution, only one deposed to the amount being returnable in rice produce.

The plaintiff, being dissatisfied, has appealed to this court.

On a due consideration of this case I cannot uphold the moonsiff's decision. I observe that besides the writer of the bond there is a third witness, neither of whom have been examined; and that the moonsiff has given a decree for the amount of the bond, which was not sued for. The defendant having neglected to pay in produce at the stipulated time, the plaintiff is entitled to the value of the rice at the current

market price of the month, in which the payment was promised to be made. The case is accordingly returned to the moonsiff for re-trial, with reference to the above remarks. The amount of stamp duty on which the appeal is engrossed will be returned.

THE 30TH MARCH 1848.

No. 226 of 1847.

Regular Appeal from the decision of Moulvee Mahomed Mobeen, Moonsiff of Gowas, dated 4th October 1847.

Alli Karreeghur, (Defendant,) Appellant,

versus

Sreenath Bhadooree, (Plaintiff,) Respondent.

. Rupees 30, 11 annas, 9 pie. Bond.

THE plaintiff prosecuted the defendant for the sum of 29 rupees, with interest, due on a bond, dated the 6th Agrahun 1853 B. S.

The defendant, in answer to the suit, denied all knowledge of the deed, and pleaded that he could read and write the Nagree character, and that had he executed the bond it would bear his signature, and not a mere mark; that a branch of a mango tree belonging to Gholam Karreeghur, who is the plaintiff's tenant, fell on his brother Lall Karreeghur's house, who requested Gholam Karreeghur to lop it off, on which the latter complained to the plaintiff and his brother Omur Bhadooree, who placed men over both him (defendant) and his brother, desiring them to pull down their houses and remove elsewhere; that, on their refusing to do so, the plaintiff and his brother cut down his (defendant's) plantain and jeewul-trees, exposed Lall Karreeghur in the sun, and levied from them $2\frac{1}{2}$ annas as peon's expenses; that in consequence of this arbitrary conduct, Lall Karreeghur preferred a complaint against plaintiff's brother, Omur Bhadooree, before the magistrate, who was summoned to attend.

The plaintiff, in reply to the defendant's objection, stated that the criminal suit against his brother had been dismissed, and that he and his brother had been separate for two years.

The moonsiff decreed the case in the plaintiff's favor on the evidence adduced, the defendant, not having taken any steps to substantiate his plea, though called upon to do so a month and four days previous to the decision being passed.

The defendant, being dissatisfied, appealed to this court, saying he was about to prove his statement when the suit was given against him. I consider, however, that the decision of the moonsiff is correct under the circumstances, and, upholding the same, I dismiss the appeal with costs.

THE 31ST MARCH 1848.

No. 35 of 1848.

Regular Appeal from the decision of Sheikh Gholam Furreed, first grade Moonsiff of Hureerparrah, dated 27th January 1848.

Kishen Mohun Musoonder, (Defendant,) Appellant,

versus

Ram Lall Gosyn, (Plaintiff,) Respondent.

Rupees 2. Value of cloth.

THE plaintiff sets forth that, on the 5th Asin 1253 B. S., the defendant, bringing Ishwur Das, the defendant, with him, took cloth from him to the value of two rupees, to be paid for in five days.

The defendant, Kishen Mohun, in defending the suit, stated that he had purchased the cloth and given it to the other defendant, and asserted having paid for the same in full, having paid one rupee in the month of Kartick following, and one rupee in the month of Cheyt, by delivery of raw silk through the defendant Ishwur Das.

The plaintiff, in reply to the defendant's assertions, denied that any payment had been made, observing that the defendant had not stated any specific dates.

The moonsiff called upon the defendant to file his proofs, but upwards of two months having elapsed without their being given in, the moonsiff passed judgment in the plaintiff's favor.

The defendant, being dissatisfied, has appealed to this court, saying that he had gone home to get a list of his witnesses and afterwards found that the case had been decided against him. I see no reason to interfere with the moonsiff's decision. The appeal is dismissed with costs.

THE 31ST MARCH 1848.

No. 26 of 1848.

Regular Appeal from the decision of Sheikh Gholam Furreed, first grade Moonsiff of Hureerparrah, dated 27th January 1848.

Nuddea Peramanik, (Defendant,) Appellant,

versus •

Sreecunt Chunder Mundul, (Plaintiff,) Respondent.

Rupees 11, 8 annas, 16 gundahs. Balance of account.

THE plaintiff stated that the defendant had mercantile transactions with him from the 17th to 22d Asin 1245 B. S., during which time defendant received goods to the value of rupees 40, 6 a. 7 g. 2 c., that, after payment of a portion of the same, the defendant calculated the remaining sum which was entered in the plaintiff's books, amounting to rupees 24, 0 a. 17 g. 2 c. of which sum rupees 13, 3 annas was liquidated

from 24th Asin 1245 to 27th Asin 1252, leaving rupees 10, 13 a., 17 g., 2c., still due, for which, and a corresponding sum as interest, the plaintiff brought his action.

The defendant, in answer to the suit, admitted having had dealings with the plaintiff, but stated that plaintiff had already sued him and obtained a decree, and that a compromise ensued, since which he had no further transactions with the plaintiff.

The plaintiff, in reply to the defendant's assertion, denied the same, saying that of the rupees 13, 3 annas paid,

Rupees 11 12 annas were paid at different times.

„ 15 on 27th Assar 1252.

„ 8 through Pearce Dutt.

13 3

The defendant having neglected to put in any proof, the moonsiff decreed the case in the plaintiff's favor.

The defendant, being dissatisfied, has appealed to this court. I observe that the moonsiff has decided the case on the plaintiff's account book without any evidence as to its accuracy. Pearce Dutt is said to have made the entries in plaintiff's book on the occasion of the defendant having calculated what he owed. His evidence is available, and the case is accordingly returned as incomplete, and plaintiff will be allowed to offer any other evidence he may be able to furnish.

ZILLAH MOORSHEDABAD.

PRESENT: H. P. RUSSELL, Esq., JUDGE.

THE 24TH APRIL 1848.

No. 28 of 1847.

Regular Appeal from the decision of Baboo Sheeb Chunder Moorkerjee, Sudder Ameen of Moorshedabad, dated the 30th September 1847.

Ramkullean Ghose, (Defendant,) Appellant,

versus

Muthoor Mundul, (Plaintiff,) Respondent.

Rupees 739-13-8. Bond.

THE plaintiff sued the defendant, Ramkullean Ghose, and his four brothers, to recover the sum of 695 rupees due on a deed of instalment, executed by them on 25th Agra-hon 1853, on account of a debt of 500 rupees, which was owing to him by their late father, Kalleepersaud Ghose.

The defendant Ramkullean Ghose alone defended the suit. He admitted that he and his brothers had executed the deed of instalment, and asserted that the 500 rupees, which the plaintiff alluded to, were in reality his own. He stated that he had been on terms of intimacy with the plaintiff's sister, Musst. Raimonee, whom he had entrusted with all his money and property, and that being anxious that his brothers should not know the extent of his profits he traded in the names of Musst. Raimonee and her brother, the plaintiff; that, on Musst. Raimonee being taken ill, she told her brother, the plaintiff, in the event of her death to make over all his, defendant's, property to him on his demanding it, and to allow him to remain in her house free of rent; that after her demise the plaintiff turned him out; that the plaintiff afterwards gave him a deed of acknowledgment to the effect that his property, which Musst. Raimonee had charge of, should be returned to him; that the deed of instalment executed by him, defendant, and his brothers, was on account of his, Ramkullean's, own money; and that if there was any difficulty in realizing the amount, he, Ramkullean, might sue in the plaintiff's name for the same.

The sudder ameen, after taking evidence for both parties, decreed the case in the plaintiff's favor, saying that its execution had been duly proved, and admitted by the defendant Ramkullean; that the evidence to the deed of acknowledgment was contra-

dictory ; and that he could not see any reason for its being given. The defendant, being dissatisfied with the sudder ameen's decision, has appealed to this court. I see no reason, however, under all the circumstances, to interfere with that officer's judgment, and dismiss the appeal with costs.

THE 24TH APRIL 1848.

No. 5 of 1848.

Regular Appeal from the decision of Baboo Sheeb Chunder Mookerjee, Sudder Ameen of Moorshedabad, dated the 7th October 1847.

Shama Soondree Dassea, (Plaintiff,) Appellant,

versus

Jadub Anund Dutt, (Defendant,) Respondent.

Rupees 799, 10 annas, 13 gundahs, 1 cowree. Bond.

THIS case is fully reported at pages 38 and 39 of the Decisions of the city court of Moorshedabad for 1847. The sudder ameen, not being satisfied with the result of the further enquiry he was ordered to make, has again dismissed the suit, and from his decision the present appeal has been preferred. The sudder ameen has given his reasons for dismissing the suit in his former decision. I place no faith on the new evidence adduced as to the way in which the plaintiff became possessed of 700 rupees, out of which she asserts that she lent 500 rupees to the defendant. I have compared the signature on the bond with the defendant's signature on official papers called for from the collector's office, and they do not appear to me to correspond. I see no reason to interfere with the sudder ameen's decision, which is confirmed, and the appeal dismissed with costs.

THE 25TH APRIL 1848.

No. 17 of 1847.

Regular Appeal from the decision of Baboo Sheeb Chunder Mookerjee, Sudder Ameen of Moorshedabad, dated the 10th April 1847.

Jadub Chunder Chowdhree, (Plaintiff,) Appellant,

versus

Abeer Shekh, (Defendant,) Respondent.

Rupees 99, 6 annas, 18 gundahs, 2 cowrees. Bond.

THE plaintiff sued for the sum of 61 rupees lent on a bond, bearing date the 25th Bysack 1246, and for rupees 38-6-18-2, interest thereon, total, 99-6-18-2.

The defendant denied all knowledge of the bond, saying that, on the day the bond was said to have been executed, he was in attendance at the court, where he had gone to prosecute a man named Ruheem Halshuneh; he attributed the institution of the suit to his having prosecuted two of the plaintiff's servants in Bhadun 1248 for carrying off his cattle.

The sudder ameen dismissed the suit, from which decision the plaintiff has appealed to this court. The sudder ameen has stated his reasons for discrediting the bond and the testimony of the subscribing witnesses; his principal arguments are, that plaintiff preferred his suit after a lapse of seven years since the date of the instrument, and that had it really been executed the plaintiff would probably have sued immediately on the bond becoming due. As regards the evidence, the sudder ameen said that, though they deposed to what they said occurred seven years before, they all mentioned the same hour of the day.

I see no valid reason for discrediting the bond and the evidence of the witnesses. The plaintiff's gomashtah, or agent, has deposed to the correctness of the papers of account which were produced in court, and I am unable to find that the defendant's statement is in any way borne out; no such case as that he alludes to was to be found in the magistrate's record office. I accordingly decree the appeal in the plaintiff's (appellant's) favor, and reverse the decision of the sudder ameen.

This case was one of several cases transferred to the sudder ameen's court by order of the Superior Court.

THE 25TH APRIL 1848.

No. 27 of 1847.

Regular Appeal from the decision of Baboo Sheeb Chunder Mookerjee, Sudder Ameen of Moorshedabad, dated the 4th October 1847.

Rammadhub Mitter, (Defendant,) Appellant,
versus

Ramkoomar Bhuttacharj, (Plaintiff,) Respondent.

Rupees 978, 9 annas, 8 pie. On account of an ikrar, or engagement.

THE particulars of this suit are fully shown at pages 5, 6, and 7, of the Decisions of the city court of Moorshedabad, for the year 1847. It was returned to the sudder ameen for re-trial on the 31st March of that year at the instance of the plaintiff. On re-trying the case, the sudder ameen awarded a decree against Rammadhub Mitter of Rs. 978 9 6

Costs, 158 13 6

Rs. 1,137 7 0

from which decision the defendant, Rammadhub, has appealed to this court.

On the case being called up to-day, the parties stated that they had come to terms. On the present appeal being instituted, the appellant deposited in court the amount of the sudder ameen's decision in full, viz. rupees 1,137-7; of this amount 137-7 are remitted, and by consent of the parties the sum of one thousand rupees will be repaid to the plaintiff (respondent,) and the balance repaid to the appellant. The order of the sudder ameen is accordingly modified.

THE 26TH APRIL 1848.

No. 15 of 1848.

Regular Appeal from the decision of Baboo Sheeb Chunder Mookerjee, Sudder Ameen of Moorshedabad, dated the 28th August 1846.

Ajnas Dibeā, (Defendant,) Appellant,

versus

Gooroopersaud Rae and Gunesh Lall Rae, (Plaintiffs,) Respondents.

Rupees 274, 4 annas. Engagement.

THE plaintiffs (respondents) sued Kasheenath Panday, Ajnas Dibeā, (appellant,) his widow, and Bishennath Panday, his brother, for money due, stating that Kasheenath Panday was in the habit of taking advances from their father, Hurpersaud Rae, and supplying the plaintiffs' silk factory with wood; that, on the 11th Bysack 1245 B. S., he made a calculation of what he owed, which was Sicca rupees 79, or Company's rupees 84-4; and received in cash 65-12, total Company's rupees 150, for which sum he executed a bond, promising to liquidate the amount in the month of Bhadoon 1245; all payments to be duly credited on the back of the document, and if not to be null and void.

Amount of bond,	150	0	0
Interest,	124	4	0

Rupees . . 274 4 0

The defendant, Kasheenath Panday, in reply to the suit, denied having executed any bond, or having had any dealings with the plaintiffs' late father, and pleaded the possibility of the plaintiffs' having forged his signature by tracing it over his real one; and that the suit must have been instituted at the instigation of his enemy, Ramdhun Panday; that, on the date of the bond, he was at a village named Budderpore, where he borrowed the sum of 50 rupees of Choonee Lall Panday, for the purchase of rice, and gave him a bond for the amount, who had sued him for the same in the court of the moonsiff of Gowas, before whom the case was then pending.

The moonsiff, having called for the plaintiffs and defendants to prove their respective pleas, eventually decreed the case in the plaintiffs' favor.

The appellant, being dissatisfied with that officer's decision, has appealed to this court.

I find that the plaintiffs produced in court (and which I have myself examined and are deposed to) no fewer than eleven books of account containing details of all the transactions with the late Kasheenath Panday (the defendant) and the plaintiffs' late father for several years up to the date of the bond, the due execution of which is fully established. The present suit was instituted on the 9th April 1845; Kasheenath Panday's answer to it was not filed till the 17th of July following. On the 12th June 1845, Choonee Lall, of whom the defendant, Kasheenath, said he borrowed 50 rupees on the same date as the bond, which is now under investigation, bears, preferred his suit before the moonsiff of Gowas. Kasheenath Panday was served with a notice intimating the fact of the institution of Choonee Lall's action on the 20th of June, to which, on the 28th of the same month, he filed an answer, admitting the justness of the demand. The moonsiff, considering (and I quite agree with him) that this was a got up suit to defeat the object of the present action, decreed the case in the plaintiffs' favor. I dismiss the appeal with costs.

THE 26TH APRIL 1848.

No. 44 of 1842.

Regular Appeal from the decision of Moulovee Nujmool Hug, late Sudder Ameen of Moorshedabad, dated the 21st September 1842.

Hurchunder Rae, (Defendant,) Appellant,

versus

Mahomed Beg, (Plaintiff,) Appellant.

Rupees 628-13-17. Possession of an estate.

THE plaintiff sued Hurchunder Rae, Kishoori Mohun, and Rae Mohun, his sons, and two others, for possession of an estate, stating that a gentleman, whose name is illegible, purchased some landed property, situated in the district of Burdwan, and the mehal of Gungun Ghora Pekiah, situated in the district of Moorshedabad, paying rent to Government of rupees 209-9-19, and gave them in gift to Musst. Shureefoonnissa Khanum, who, on leaving this country for England, assigned over the property in Burdwan in gift to her three brothers, Daim Beg, Allum Beg, and Kaim Beg, and the property situated in the Moorshedabad district to her sister, Jebunnissa Khanum, also in gift, who had her name entered as the proprietor in the collector's office, and died in the month

of Jeit, Moolkee year 1233, leaving her brothers Dilawur Beg, and Munnee Beg, (plaintiff's husband,) her heirs. Munnee Beg died first, and after him, Dilawur Beg, leaving the plaintiff's minor son Mahomed Beg, and Musst. Mohunnissa, said to be his wife, his heirs; that in the year 1243, she executed some kind of deed in favor of the defendant, Hurchunder Rae, who obtained possession of the property. The plaintiff sues for possession of the whole of the estate, and pleads that as Mohunnissa, even as Dilawur Beg's widow, under the Mahomedan law was only entitled to a 4 annas' share of the property, she had no legal right to sell the remaining 12 annas' share, which legally belongs to her (the plaintiff's) minor son, Mahomed Beg.

The defendant, Hurchunder Rae, in reply to the suit, pleaded that Musst. Mohunnissa, was Dilawur Beg's wife, and that in the year 1244, she sold him a 4 annas' share of the property on a deed of sale, giving his sons the remaining 12 annas ($\frac{3}{4}$ ths) on a putnee lease.

The plaintiff, in reply to the defendant's objections, stated that after Dilawur Beg, who was a moonsiff in the Purneah district, died, Musst. Mohunnissa, who represented herself as his widow, and Mirza Mahomed Beg, the plaintiff's son, as his nephew, applied for his arrears of wages.

The sudder ameen, after calling upon either party to prove their respective pleas, was of opinion that Musst. Mohunnissa Khanum was proved to have been Dilawur Beg's wife. The sudder ameen called upon the moulvee for an exposition of the Mahomedan law, who replied that as Musst. Mohunnissa, as Dilawur Beg's wife, was only entitled to $\frac{1}{4}$ th of the property, she had no power over the rest in any way, and that all her acts were invalid as regards the remaining $\frac{3}{4}$ ths of it. The sudder ameen accordingly gave a decree in favor of the plaintiff as guardian of her son, for $\frac{3}{4}$ ths of the property sued for.

The defendant, Hurchunder Rae, being dissatisfied with the sudder ameen's decision, has appealed to this court, but I do not recognize his right to appeal. Musst. Mohunnissa had only a right to alienate her own $\frac{1}{4}$ th share of the property, which she sold to Hurchunder Rae, which the sudder ameen's decision does not affect. It is quite clear that she had no legal power whatever over the remaining 12 annas share of the estate, and that her lease of the same to Hurchunder Rae's sons was beyond her power to grant. On this latter point Hurchunder Rae is silent, and his sons, who have attained their majority, have not appealed to this court. The sudder ameen has not passed any order as to mesne profits: the plaintiff will be entitled to them from the date of the sudder ameen's decree, which is hereby confirmed, and the appeal dismissed with costs.

THE 27TH APRIL 1848.

No. 24 of 1847.

Regular Appeal from the decision of Baboo Sheeb Chunder Mookerjea, Sudder Ameen of Moorshedabad, dated the 27th August 1847.

Rajkissore Ghose, (Defendant,) Appellant,

versus

Rakhal Das Mookerjea and Oomachurn Mookerjea, (Plaintiffs,)
Respondents.

Rupees 319-13-5. Silk.

THE plaintiff sets forth that the defendant had silk transactions with the plaintiff at their Seerhuttee factory; that, on making up their account books for the year 1249, there appeared a balance against the defendant of rupees 257-9-10, which was carried over and debited against him in the books for 1250, which the defendant signed; that the plaintiff sued to recover the amount less 50 rupees, viz.

Bal unce as per book,	257	9	10
Interest,	120	14	15
	<hr/>		
	378	8	5
Deduct paid,	50	0	
Interest,	8	11	
	<hr/>		
	58	11	0
	<hr/>		
Amount of suit,	319	13	5

The defendant, in answer to the suit, admitted the balance as stated, saying that, after payment made of a portion it by his security, Rammissur Rae, there appeared a balance against him in 1251, of rupees 167-9-10, for which sum both he and his surety executed a deed of instalment, which was given to the plaintiff's factory gomashtah, but that as the document was drawn out on one sheet of stamp paper plaintiff had withheld it.

The defendant having omitted to produce any proof in support of his defence, the sudder ameen gave a decree in the plaintiffs' favor.

The defendant, being dissatisfied, has appealed to this court. I find that he was called upon to support his defence on the 7th July 1847 and 24th August 1847, and as he has not offered any thing calculated to impugn the judgment of the lower court, I affirm the same, and dismiss the appeal with costs.

THE 27TH APRIL 1848.

No. 4 of 1848.

Regular Appeal from the decision of Baboo Sheeb Chunder Mookerjee, Sudder Ameen of Moorshedabad, dated the 29th November 1847.

Illahi Buksh, (Plaintiff,) Appellant,

versus

Gouhur Kussab, Musst. Nooreah, Musst. Hoorun, widow of Moodun Kussab and mother and guardian of his daughters, Musst. Rehemun and Musst. Pooneeah, (Defendants,) Respondents.

Rupees 479, 15 annas. Bond.

THE plaintiff sued to recover the sum of 100 rupees lent by her sister, Musst. Mehernissa, to the defendant, Gouhur Kussab, on the 27th Bysack 1247 B. S., and for 200 rupees lent to the defendant, Gouhur Kussab, on the 8th Assar 1247 B. S., stating that a bond was given for each sum, and that on each occasion the defendant, Moodun, became security. Of the sum 34 rupees were paid, viz.

On 7th Jeit 1249, ... Rs. 20 0 0

On 2d Assar, 1252,... „ 10 0 0

By meat taken, „ 4 0 0

that in consequence of his being importunate for the payment of the sums lent, the defendant, Gouhur Kussab, closed his shop, and that, on the 13th Jeit, Musst. Nooreah, his mother, entered into a security bond, undertaking with her son to pay the amount of both bonds in the course of a year.

Amount of bond bearing date the 27th Bysack

1247,	Rs. 100	0	0
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Interest thereon,	„ 72	8	0
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Amount of bond bearing date the 8th Assar 1247,	„ 200	0	0
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Interest thereon,	„ 142	7	0
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	Rs. 514	15	0
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Deduct paid,	„ 34	0	0
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	Rs. 480	15	0
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The defendants, Gouhur Kussab and Musst. Nooreah, his mother, in reply to the suit, denied all knowledge of the transactions alluded to. Gouhur Kussab pleaded that Moodun Kussab had a spite against him as he married his daughter without his consent; and Musst. Nooreah that as there were two bonds, the suit was liable to be struck off the file.

The sudder-ameen, in deciding the case, was of opinion that the execution of the two bonds, and of their corresponding security

bonds, was fully established : he accordingly gave a decree for each amount against the defendant, Gouhur Kussab, and against the estate of the first surety, Moodun, acquitting Musst. Nooreah, as he was unable to discover any reason for her voluntarily coming forward to become such.

The plaintiff, being dissatisfied with the sudder ameen's decision in releasing Musst. Nooreah from any responsibility, has appealed to this court. I find that only one bond, viz. that for 100 rupees, with its collateral security bond, has been filed and deposed to ; neither the other bond, nor its corresponding security bond, nor the security bond of Musst. Nooreah, has been filed. The sudder ameen has contented himself by calling for a previous case in which these documents were put in, and which was struck off the file, and perusing the evidence taken on that occasion. The sudder ameen ought to have calculated and allowed interest on the 34 rupees paid by the defendant. The case will be returned to that officer for re-trial, and, in deciding the case, the sudder ameen will act up to the above remarks.

The usual order will issue as regards the return of the value of the stamp paper on which the petition of appeal is engrossed.

THE 28TH APRIL 1848.

No. 162 of 1847.

Regular Appeal from the decision of Baboo Peetumber Mookerjee, Moonsiff of Zeeagunge, dated the 29th June 1847.

Dhurrum Chund Lahata, (Plaintiff,) Appellant,

versus

Benee Madhob Das, (Defendant,) Respondent.

Rupees 10, 14 annas, and 5 pie. Balance of account.

THE plaintiff sued the defendant for the sum of rupees 6, 12 annas, and interest, being the value of a piece of nunsook cloth, purchased on the 8th Kartik 1248 B. S., stating that the defendant at the same time entered his name in his account book.

The defendant, in reply to the suit, denied the justness of the demand, urging that the plaintiff might have inserted his name in a blank place in his account book, or that by taking a facsimile of the defendant's signature to his answer to the suit, the plaintiff might still prepare either a hath chitta or account books, as bearing his signature. The defendant added that the suit had been maliciously instigated against him, because his uncle, who was a witness on the part of a man named Fuckerab, who had preferred a complaint against the plaintiff in the magistrate's court, refused to give evidence to suit his purpose.

The plaintiff filed his account book, and a hath chitta, or written memorandum, said to bear the defendant's signature, and the moonsiff eventually dismissed the suit.

The plaintiff, being dissatisfied with the decision of that officer, has appealed to this court. I find that the moonsiff, at the plaintiff's request, desired the defendant to write his name in order to compare his handwriting with the signature in the memorandum, and finding a dissimilarity, and that the plaintiff's account book bore the name of Baneemadhob Das, while the memorandum bears that of Baneemadhob Sircar, dismissed the suit without taking any evidence.

The decision of the moonsiff is manifestly incomplete. Of the plaintiff's witnesses three were served with subpoenas, and it was the moonsiff's duty to take proper measures for their attendance in court. Evidence to the account book and memorandum, said to bear the defendant's signature, was indispensable. The appeal is accordingly decreed, and the decision of the moonsiff reversed, and the case will be returned to that officer for re-trial.

The usual order will issue as regards the refund of the amount of the stamp paper, on which the petition of appeal is engrossed.

THE 28TH APRIL 1848.

No. 55 of 1848.

Regular Appeal from the decision of Baboo Tarrakishen Haldar, Moonsiff of Jungypore, dated the 29th February 1848.

Ghazee Mundul, (Defendant,) Appellant,

versus

Chowrassee Debea, and as mother and guardian of her sons, Kartik Persaud and Gunesh Persaud, (Plaintiff,) Respondent.

Rupees 27, 0 anna, 8 pie. Instalment.

THE plaint set forth that, on the 21st Maugh 1249 B. S., the defendant executed and handed over to the plaintiff's late husband, Dussaram Rae, a deed of instalment for the amount of rupees 17-4-0, being the amount due by him for previous money transactions, but that as no portion of the amount had been paid, the suit was brought to recover the same with interest thereon.

The defendant, in reply to the suit, denied the deed *in toto*, stated that he never had any money transactions with the plaintiff, and requested that the plaintiff's books might be called for, observing that the plaintiff had made no mention of the dates on which the former money transactions had taken place. The plaintiff asserted that he had no account books, and the moonsiff ultimately awarded judgment in his favor on the evidence of two witnesses, Ramchunder Ghose and Nundlal Manjee.

The appellant, being dissatisfied with the moonsiff's decision, has appealed to this court. On looking at the deed of instalment I observe that the name of Nundlal Manjee is written with much darker ink than the rest of the writing; and that the evidence of two more witnesses to the document is available; that though the plaintiff states that he has not any account books, he may have some written memoranda showing the details of previous transactions with the defendant. I consider therefore that the moonsiff's enquiry is incomplete, and return the case for re-trial with reference to the above observations. The appeal is accordingly decreed, and the decision of the moonsiff reversed.

The usual order will issue as regards the return of the value of the stamp on which the petition of appeal is engrossed.

THE 28TH APRIL 1848.

No. 28 of 1848.

Regular Appeal from the decision of Baboo Gooropersaud Bose, Moonsiff of Kandhee, dated 26th January 1848.

Ramgopaul Mundul, (Defendant,) Appellant,

versus

Burkutoollah, (Plaintiff,) Respondent.

Rupees 138, 8 annas. Value of rice.

THE plaint sets forth that, on the 11th Assin 1251, the defendant, Ramgopaul, borrowed of him, on a bond, the sum of 61 rupees, to be repaid in the month of Poos, in rice, at the rate of one bees the rupee: the defendant having failed to fulfil his engagement, the plaintiff brought his action at one bees to the rupee, being, for 61 rupees, 3 poutees 13 bees, saleable, in the month of Assin 1252, at 8 arrees to the rupee,..... 152 8 0

Deduct amount paid from 1st Maugh to

14th Phalagoon 1252,..... 14 0 0

Paid on the 27th Maugh 1253,..... 1 0 0

————— 15 0 0

Rs. 137 8 0

As the defendant Ramgopaul Mundul and his brothers lived together, the plaintiff included the latter in his action.

The defendant, Ramgopaul Mundul, in reply to the suit, admitted having executed the deed, but stated that the usual custom was to pay the money borrowed with interest, and that the plaintiff had debited the sum borrowed in his books with 3 annas' profit on each rupee, and made him sign the same; that, when he was about to pay, the plaintiff came to him, and was paid 65 rupees, and gave him a receipt for the same, saying, that after ascertaining

the exact sum due he would return the bond ; that he (defendant) went to the plaintiff to have the matter adjusted, but could get no statement.

The defendant having failed to produce his receipt, the moonsiff, considering that the terms of the engagement had been virtually cancelled by payment of 15 rupees, gave a decree in the plaintiff's favor for the original sum borrowed, with interest thereon, less the sum of 15 rupees already paid, viz.

	Rs.	As.	P.
Original sum,	61	0	0
Interest,	23	13	12½
	84	13	12½
Deduct paid,	15	0	0
	69	13	12½

The defendant, being dissatisfied with the moonsiff's decision, has appealed to this court, but has urged nothing calculated to affect that officer's judgment in essential points, and I dismiss the appeal with costs. I find, however, that the moonsiff has miscalculated the interest, which will be corrected.

THE 28TH APRIL 1848.

No. 45 of 1848.

Regular Appeal from the decision of Moulvee Mahomed Mobeen, Moonsiff of Gowas, datad 29th February 1848.

Tuzeem Mundul, (Defendant,) Appellant,

versus

Ramtunnoo Moiter, (Plaintiff,) Respondent.

Rupees 30, 9 annas, 3 pie. Balance of account.

THE plaintiff sued to recover the sum of rupees 28, 1 anna, with interest, being the balance of an account, stating that, on the 29th Agrahun 1253 B. S., the defendant received the sum of 50 rupees, and on the 19th Poos 1253, rupees 231, being in the aggregate rupees 281, as an advance for the delivery of raw silk, that from the 3d to 23d Pous 1253, the defendant delivered silk to the value of Rs. 197 14 5
and on the 6th Maugh paid in cash 55 0 0

Total,.. 252 14 5

which sum deducted from 281 rupees received, left a balance of rupees 28-1-7, the amount sued for with interest thereon.

The defendant having neglected to reply to the suit, the moonsiff decided the case in the plaintiff's favor on the evidence adduced.

The defendant, being dissatisfied with the moonsiff's decision, has appealed to this court, and asserts that he never had any transactions with the plaintiff, and that he received no notice of the institution of the suit; but as I find that the usual notice was duly conveyed to his village, and the usual proclamation was affixed to his residence on the 21st January 1848, requiring his attendance in fifteen days, I see no reason to interfere with the moonsiff's decision. The appeal is dismissed with costs.

THE 28TH APRIL 1848.

No. 57 of 1848.

Regular Appeal from the decision of Moulvee Mahomed Mobeen, Moonsiff of Gowas, dated 11th March 1848.

Gooroochurn Mundul, (Defendant,) Appellant,

versus

Muddun Mohun Sircar, (Plaintiff,) Respondent.

Rupees 8, 4 annas. Agreement.

THE respondent (plaintiff) sued the appellant, and his brother who has not appealed, to recover the sum of 5 rupees, on a bond executed by them on the 1st Bysack 1249, in favor of his late father, Surroop Sircar, with interest thereon.

The defendants respectively appointed pleaders, but omitted to reply to the suit, which was adjudged against them on the evidence adduced. The defendant, Gooroochurn Mundul, being dissatisfied, has appealed to this court, and asserts that he liquidated the debt on the 25th Sawun 1249 B. S., by payment of 5 rupees, 7½ annas, and obtained a receipt on plain paper for the amount, and that he attended the moonsiff's court, but that that officer would not receive his reply to the suit.

I see no reason to interfere with the moonsiff's decision. The execution of the bond has been admitted, the appellant appointed a pleader on his behalf on the 24th January 1848, and as the case was not decided until the 11th of March, the appellant had ample time to file his answer, which he no doubt would have done were his statement correct. The appeal is dismissed with costs.

THE 29TH APRIL 1848.

No. 167 of 1847.

*Regular Appeal from the decision of Baboo Goorooopersaud Bose,
Moonsiff of Kandhee, dated 3d July 1847.*

Bissessuree Debea, (Plaintiff,) Appellant,

versus

Chundur Mundul, (Defendant,) Respondent.

Bond suit for 12 rupees, with interest.

THE defendant denied having executed the deed. This suit has been twice returned for re-investigation. The document on which it was brought has not been proved, as the witnesses could neither write nor read, and the writer of it has demised. The last time the case was returned, the plaintiff (appellant) stated that the defendant (respondent) had wished to compromise, and that he could prove the fact. The moonsiff, after taking the depositions of three witnesses to this effect, again dismissed the suit, not being satisfied with the evidence.

The plaintiff, being dissatisfied with the moonsiff's decision, has appealed to this court; but as I see no reason to interfere with that officer's decision, I dismiss the appeal with costs.

THE 29TH APRIL 1848.

No. 42 of 1848.

*Regular Appeal from the decision of Moulvee Mahomed Mobeen,
Moonsiff of Govas, dated 23d February 1848.*

Khitternath Chatterjea, (Plaintiff,) Appellant,

versus

Khidmut Mundul, (Defendant,) Respondent.

Rupees 79. Engagement.

THE plaintiff sued to compel the defendant to give up two documents, stating that, on the 15th or 16th Assar 1248 B. S., he was seized by some men, who were sent by the defendant, and taken to the defendant's house, where the defendant made his agent, Jafri Moonshee, prepare an acknowledgment for the sum of 67 rupees, and a receipt for the sum of 10 rupees, purporting to be for rent of some brimmittah lands, which defendant holds, and forcibly made him, the plaintiff, sign the said papers; that, on the

21st Assar, he brought the circumstance to the notice of the magistrate, but that the case was struck off the file without investigation ; that the defendant, on ascertaining that the plaintiff was about to prosecute him in the civil court, promised to return the documents in question, and that he (the plaintiff) had subsequently, on many occasions, demanded that they be given up to him, but without avail.

The defendant, in reply to the suit, denied the correctness of the plaintiff's statement, denied that he held any land from the plaintiff, and having taken any receipt for rent, and pleaded that, on the 15th Assar, the plaintiff came to his house, made a calculation of what he owed, and voluntarily executed and handed over to him an acknowledgment for the sum of 64 rupees.

The moonsiff, having taken evidence for both parties dismissed the suit, on the ground that there was a discrepancy between the plaintiff's statement on the present occasion and his statement before the magistrate, when he said that the acknowledgment taken from him was for 69 rupees, and that a period of six years had elapsed since the act complained of was said to have been committed, before the civil action was instituted ; whereas, from the evidence adduced on the part of the defendant, it was satisfactorily established that the document alluded to by the defendant had been voluntarily executed.

The plaintiff, being dissatisfied with the moonsiff's decision, has appealed to this court ; but as I see no reason to impugn that officer's judgment, I dismiss the appeal with costs.

THE 29TH APRIL 1848.

No. 48 of 1848.

Regular Appeal from the decision of Moulvee Mahomed Mobeen, Moonsiff of Gowas, dated 18th February 1848.

Chistee Dhur Mundul, (Defendant,) Appellant,

versus

Nundkishwur Mundul, (Plaintiff,) Respondent.

Rupees 8, 5 annas. Bond suit.

THE plaintiff sued the defendant, and another person, Rubeeram, who has not appealed, to recover the sum of 7 rupees lent to them on a bond bearing date the 7th Jeit 1253.

The defendant, Chistee Dhur Mundul, in reply to the suit, admitted having executed the bond, but asserted that 4 rupees only were received, plaintiff having deducted 1 rupee on account

of interest in advance, and 2 rupees on account of a debt owed him by the defendant's (Rubeeram's) son; the defendant further pleaded payment of more than the balance of the debt, viz.

	Rs.
On the 5th Pous 1253,.....	1
7th „ „	1
15th Maugh 1253,.....	2
10th Cheit,.....	1
13th ditto,.....	1

for which sums he received 2 receipts, one for 4 rupees, and one for 2 rupees.

The moonsiff, after taking evidence to the execution of the bond, decreed the case against both of the defendants, observing that it was stipulated in that document that all payments should be duly credited on the back of it, or be otherwise null and void, and that the receipts were on plain paper, and not attested by any witness.

The defendant, Chistee Dhur Mundul, being dissatisfied with the decision of the moonsiff, has appealed to this court, but as that officer's judgment appears correct, I dismiss the appeal with costs.

THE 29TH APRIL 1848.

No. 187 of 1847.

*Regular Appeal from the decision of Moulvee Mahomed Mobeen,
Moonsiff of Gowas, dated 29th July 1847.*

Shahabdee Mundul, (Defendant,) Appellant,

versus

Gholam Hossein Mundul, (Plaintiff,) Respondent.

Rupees 50, 0 anna, 7 pie. Deposit.

THE particulars of this case are fully detailed at pages 33 and 34 of the Decisions of the civil court of Moorsiedabad for 1846. The moonsiff, having made the further enquiry ordered, decreed the case in the plaintiff's favor, from which decision an appeal has been preferred.

The moonsiff's investigation appears now to be complete. That the defendant received the amount of 39 rupees, is satisfactorily established, and I see no reason to impugn the moonsiff's judgment. The appeal is dismissed with costs.

THE 29TH APRIL 1848.

No. 144 of 1847.

*Regular Appeal from the decision of Baboo Goorooopersaud Bose,
Moonsiff of Kandhee, dated 10th June 1847.*

Ramkoomar Chund and Puresh Chund, (Defendants,) Appellants,
versus

Rajkissore Mundul, (Plaintiff,) Respondent.

Rupees 9-0. Value of cocoanuts.

THE particulars of this case are detailed at page 2 of the Reports of civil decisions of the city court of Moorshedabad for 1847. The moonsiff, having made the further enquiry ordered, gave a decree in the plaintiff's favor, from which an appeal has been preferred.

I find that the fact of the trees having been specially assigned over to the plaintiff is proved. The late Sreenath Ghose, from whom the plaintiff obtained the lease, was the respondent Hurrischunder Ghose's brother. I see no reason to interfere with the moonsiff's decision, which is confirmed, and the appeal dismissed.

ZILLAH NUDDEAH.

PRESENT: J. C. BROWN, Esq., JUDGE.

THE 22D APRIL 1848.

No. 115 of 1844.

Regular Appeal from a decision passed by Syud Ahmud Bukhsh Khan, Officiating Principal Sudder Ameen of Zillah Nuddea, on the 23d April 1844.

Surroop Chund Sircar, and after his decease Brindraban Sircar, his son, and Sreeshchunder Sircar, his grandson, (Plaintiffs,) Appellants,

versus

Mr. Francis Harris, and after his decease Mrs. Helen Harris, widow, and others, (Defendants,) Respondents.

THE plaintiff sued to obtain possession of 71 beegahs, 5 biswas of lakhiraj land, and damages assessed at 3,334 rupees, 8 annas, together with 700 rupees, 4 annas, and 15 gundas interest, and 50 rupees for trees under the following circumstances.

Two brothers named Dabeecunt Rai and Shamacunt Rai were jointly possessed of 142 beegahs, 10 biswas of lakhiraj land in mouzah Mirzanuggur, defined by certain boundaries. On the 2d Sawun 1231 B. Æ., they executed separate pottahs each for his own share,—Shamacunt Rai on his part executed a pottah for his moiety at a fixed rent, 35 rupees, 10 annas, (thirty-five rupees, ten annas,) in the plaintiff's favor, which is now the subject of this suit. The plaintiff paid the rent regularly and cultivated the land with indigo. In 1245 B. Æ., he had a fine crop of indigo ready, which Mr. Francis Harris cut and carried off to his own factory, and dispossessed the plaintiff, who accordingly now prosecutes him and proprietor for the land, &c., as set forth above. A separate suit was instituted for the share belonging to Dabeecunt Rai.

Mr. Francis Harris replied that Shamacunt Rai had no lands situated within the boundaries stated in the plaint, and that the

land belonging to him was lying uncultivated. That the plaintiff had not cultivated the land, nor had he (the defendant) cut any indigo from it. That he (the defendant) has Dabecunt Rai's share in his occupancy, which the plaintiff declares to belong to Shamacunt Rai.

The officiating principal sudder ameen, for the reasons stated in his decision, did not consider the plaintiff had proved his case; and recorded also that the summary decree, dated the 26th of March 1841, was fraudulently and collusively obtained by Shamacunt Rai, judgment being confessed by the appellant, although he subsequently tried to prove that he had previously been dispossessed by Mr. Harris.

He has given, as a further reason for rejecting the plaintiff's suit, that, on the 20th of May 1830, corresponding with 13th Jeth 1237, Dabecunt Rai and Shamacunt Rai obtained a summary decree against a man named Hajjeer Sheikh for rent for 50 beegahs and 14 biswas of the same land cultivated by him in 1235 B. Æ., under an engagement for four years extending from 1235 to 1238. If the plaintiff's pottah, dated 1231 B. Æ. was genuine, and the two brothers had given him the whole of their lands as set forth at a fixed kaimee jumma, how was it that they jointly obtained a decree against another party for rent of a portion of those lands afterwards?

On the day the officiating principal sudder ameen decided the suit, which is the subject of this appeal, he likewise disposed of one regarding Dabecunt Rai's share by dismissing it. That decision has not been appealed from, which is unaccountable, as the parties to it were the same as in this suit; and if the appellant considered his appeal in this case a good one, there is no ostensible reason why he should not have appealed that too.

I concur with the officiating principal sudder ameen in opinion that the plaintiff (appellant) has not proved his case, and that he has not advanced any thing in his petition of appeal to cause a favorable view to be taken of it.

Mr. Francis Harris having denied that he had any thing to do with Shamacunt's share of the lakhiraj land, is no proof in his (the plaintiff's) favor. The suit was brought by the plaintiff (appellant) against the defendants (respondents) for having dispossessed him of certain lands comprising the lakhiraj of Shamacunt Rai, and forcibly carried off indigo plant that was growing on the said land. The defendant, Mr. F. Harris, repudiated the claim, and the plaintiff has not proved his case.

ORDERED,

That the appeal be dismissed, the officiating principal sudder ameen's decision confirmed, and all the costs are to be charged to the appellant with interest.

THE 25TH APRIL 1848.

No. 11 of 1848.

*Regular Appeal from a decision passed by Shamul Pran Moostofee,
Moonsiff stationed at Hunrah, on the 30th December 1847.*

Issur Chunder Biswas, (Plaintiff,) Appellant,

versus

Chand Mundul, Gopal Mundul, and Curreem Mundul,
(Defendants,) Respondents.

THIS suit was brought by the plaintiff (appellant) against the defendants, as the heirs of Moojdeen Mundul, deceased, on a bond debt. The moonsiff has stated, as one of his reasons for dismissing the claim, "that the witnesses had embraced Christianity, and that according to the regulations their evidence could not be credited. That they had abjured their religion, and embraced another creed; were very low caste men, and gave evidence in several cases; and that the evidence of such vicious wicked men could not be received in a court of justice."

I am of opinion that the moonsiff has acted very wrong in rejecting the evidence of the above named witnesses on the grounds he has stated. He has objected to the stamp paper on which the deed was executed, because it was purchased from the stamp vendor about a year previous to the date of the bond. In this too he was wrong, as the purchase having been made previously does not vitiate the deed.

It appears that the bond was due six months after date, but the suit was not instituted for about nine years, notwithstanding the decease of the party who executed it. The account books given in by the plaintiff are only loose sheets, strung together at one corner; and those previous to 1251 have not been proved. The plaintiff's gomashtah, who has given evidence, states he has been in plaintiff's service since 1251, and has had charge of the account books produced since that time. Of those preceding his time, he can only say he has heard that the plaintiff's brother, Raghub Chunder Biswas, wrote.

The defendants deny the claim; and in proof of the improbability of it, Chand Mundul, one of the respondents, prosecuted the plaintiff and his brother in another suit for a bond debt, which case the moonsiff likewise dismissed.

I am of opinion that the plaintiff's claim is open to suspicion, on the ground of the great and unaccountable delay in his bringing his suit forward, and the want of dependence on the account books he has produced. There is no ostensible reason why the claim should not have been preferred sooner, particularly when the original alleged executor of the bond died; and as this suspicion exists, I cannot do any thing but dismiss the appeal, al-

though I do not subscribe to the ground on which the moonsiff rejected the claim.

ORDERED,

That the appeal be dismissed, and all the costs to be charged to the appellant.

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THE 26TH APRIL 1848.

No. 105 of 1847.

*Regular Appeal from a decision passed by Baboo Ramlochun Ghose,
Principal Sudder Ameen, on the 21st of May 1847.*

Jygopal Chowdhree and others, (Defendants,) Appellants,

versus

Doorgah Munnee Debea, (Plaintiff,) Respondent.

THE appellants in this case are landholders, and the respondent a joint tenant with another party, named Mirtunjai Pundha, under a kubooleut executed by her father-in-law, Juggomohun Pundha, who was also the uncle of Mirtunjai Pundha, bearing date the 25th of Magh 1232 B. S.—for rupees 680-9-4.

During the years 1248-49 and 50 B. S., the appellants allowed the sum of 96 rupees, 6 annas, to be suspended on account of certain lands, included in the lease, which had been resumed by the Government officers for assessment. Without any further engagement on the part of the respondent, or the grounds on which the suspension of payment had existed being altered, the appellants sued the respondent for the full share of rent due by her according to her father-in-law's kubooleut in a summary suit before the collector, and obtained a decree. The respondent instituted her suit before the principal sudder ameen to reverse that summary decree.

The principal sudder ameen has ruled that the collector had no authority to decree for a higher rent than it was proved had been paid by the tenant in preceding years; and it was clear from the summary decrees passed by that officer for rent, between these parties, that during the three years antecedent to 1251, the appellants' father, Neelcomul Pal Chowdhree, had suspended his demand of 96 rupees, 6 annas, annually; no decree for a higher sum than formerly claimed should have been given, particularly as no fresh agreement had been entered into between the parties. He therefore decreed the case in favour of Doorgah Munnee Debea, the respondent, and reduced the amount claimable by the collector's decree to what was demanded for the years 1248, 49, and 50 B. S.

Considering the decision passed by the principal sudder ameen to be perfectly just and legal, there is no occasion, under the provisions of Clause 3, Section 16 of Regulation V. of 1831, to issue a notice for the respondent.

ORDERED,

That the appeal is dismissed, and the principal sudder ameen's decree, dated the 21st of May 1847, is confirmed. All the costs to be paid by the appellant.

THE 27TH APRIL 1848.

No. 109 of 1844.

Regular Appeal from a decision passed by Syud Ahmud Bukhsh Khan, Officiating Principal Sudder Ameen of Zillah Nuddeah, on the 20th April 1844.

Debnath Mookhoorjeah, guardian of Joogul Kishore, a minor,
(Defendant,) Appellant,

versus

Gauzy Maezollah, (Plaintiff,) Respondent.

THE dispute between the parties in this case, is, whether a deed of sale (kubbulah) executed by the respondent in favor of Joogul Kishore, the ward of the appellant, on the 4th of Bysack 1246 B. S., corresponding with 16th of April 1839, was a *bond fide* sale, or only a *bye bilwuffa*, i. e. reclaimable on a re-payment of the money.

The officiating principal sudder ameen, after a careful and patient investigation, has, for the reasons detailed in his decree dated the 20th of April 1844, declared the right of the plaintiff, (respondent,) to redeem the property, and to receive indemnification for the time he was forcibly kept out of possession by the defendant (appellant), as well as to mesne profits.

After an attentive hearing of all the evidence adduced by both parties, and a deliberate consideration of the objections made by the appellant to the decree passed by the officiating principal sudder ameen, I am of opinion, that the decision appealed from is perfectly legal and just, and that the appeal preferred is unfounded and vexatious.

Under these circumstances, it is ordered that the appeal is dismissed, the decree passed by the officiating principal sudder ameen on the 20th of April 1844 is confirmed, and all, the costs are to be paid by the appellant.

THE 28TH APRIL, 1848.

No. 115 of 1847.

Regular Appeal from a decision passed by Baboo Lukheenaraen Mitr, Moonsiff stationed at Kaghuzpookoorea, on the 25th June 1847.

Mirtunjai Pandhu, (Plaintiff,) Appellant,

versus

Jygopal Pal Chowdhree and others, (Defendants,) Respondents.

THE defendants, who are the zemindars, prosecuted the plaintiff in a summary suit before the collector under the provisions of Regulation VII. of 1799, for balance of rent as follows :—

Amount of rent claimable for 1251 B. \mathcal{A} ., Co's. Rs.	362	15	10
Interest due on Instalments,	16	5	9

	379	4	19
Deduct amount realized	266	0	0

Amount sued for Company's rupees	113	4	19
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The collector decreed the amount, and the appellant brought his suit for the reversal of the summary suit in the court of the moonsiff of Kaghuzpookoorea when he lost it; the moonsiff having confirmed the collector's decree.

It appears from the pleadings in this suit, as well as from those in No. 105 of 1847, disposed of by me on the 26th instant, that the plaintiff (appellant) was entitled to a suspension of rupees 96, 6 annas, on account of certain lands in his occupancy having been attached by the revenue authorities for resumption; and that for the three years immediately preceding 1251 B. \mathcal{A} . that sum had been suspended, and no arrangement had been entered into between the parties for its being paid, neither had the plaintiff (appellant) engaged to pay it.

During the year he had paid the sum of 266 rupees, for which the zemindar gave him credit; and that, with the 96 rupees 6 annas, made up the whole amount claimed by the plaintiff, with the exception of 9 annas and 10 gundahs in the principal, and 16 rupees, 5 annas, and 9 gundahs he charged for interest.

I am of opinion that the sum of 96 rupees, 6 annas, which had been annually suspended for three consecutive years by the zemindar, was not chargeable without an engagement on the part of the plaintiff (appellant) who was the ryot, and the collector erred in decreeing it. I am further of opinion that the zemindar (respondent) was not entitled to interest, as he filed no account shewing how it was due, and if he had fairly given the appellant credit for the 266 rupees from the dates on which he paid the money.

The account accordingly between the parties stands thus:—

Amount of rent claimable Company's rupees ...	362	15	10
Deduct amount suspended	96	6	0
„ „ paid during the year	266	0	0
	362	6	0

Balance due to zemindar,	0	9	10
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The plaintiff (appellant) thus was only indebted in the amount of that balance to the defendant (respondent) when he sued him for 113 rupees, 4 annas, 19 gundahs. The appellant therefore is clearly entitled to a reversal of the collector's decree for all in excess of 9 annas, 10 gundahs, (nine annas and ten gundahs), and to the costs incurred by him in the collector's cutcherry amounting to 5 rupees, 6 annas, 12 gundahs.

IT IS THEREFORE ORDERED,

That the appeal is decreed, the order of the moonsiff dated 25th June 1847, and the collector's summary decree dated the 25th July 1845, are reversed. The appellant is to receive the sum of 4 rupees, 13 annas, and 2 gundahs, on account of his costs in the collector's office, should he have already paid those costs, (being the balance after deducting 9 annas and 10 gundahs, due by him,) from the respondents. The whole of the costs, with interest from this day, to be paid by the respondents.

ZILLAH PURNEAH.

PRESENT: D. PRINGLE, Esq., JUDGE.

THE 29TH APRIL 1848.

Appeal No. 470 of 1847.

Sudder Ameen, Mr. Noncy.

G. Drummond, (Defendant,) Appellant,

versus

Bhola Sahoo, (Plaintiff,) Respondent.

Seetulchund Rac—Vakeel for Appellant.

Feizoollah—Vakeel for Respondent.

THIS is an action to recover rupees 41, being rent taken in excess, and to obtain a discharge in full for the years 1249, 1250, and 1251. The plaintiff setting forth, that appellant having become sub-lessee of the farm in which respondent cultivated as ryot, the former, in 1250, obtained by duress respondent's signature to a jumma-wasil-baukee, exhibiting at his debit a balance of 41 rupees, payment of which was at the same time exacted, and a kuboolout taken for 188 beegahs at a rent of 24 rupees; who complained against appellant in the criminal court, but was referred to a civil action. That having now paid this rent for three years, he prays to recover the amount exacted under the aforesaid compulsory adjustment. Appellant replying that respondent formerly held 341 beegahs, of which, on the farm being leased to the factory, he relinquished 153 beegahs, duly signing the wasil-baukee referred to, and paying the balance thus due. That his complaint was thrown out by the magistrate, no duress whatever being proved; the respondent having since regularly paid his rent under the kuboolout then taken.

The sudder moonsiff, in his judgment, finding the objections of the respondent have reference to the quantity of grazing ground originally held by him, as declared to be 341 beegahs by the appellant, while on measurement by ameen of the court there is now found to be only 144 beegahs, rejects the wasil-baukee, and decrees the claim.

In appeal the same pleas are adduced, and the wasil-baukee referred to, as being made in the presence and with approval of the appellant.

JUDGMENT.

The respondent in this case does not deny having voluntarily executed the kubooleut produced by the appellant; nay, the claim to a release proceeds thereon. But pleads that his signature was at the same time forcibly procured to a jumma-wasil-baukee, which exhibited a balance of rupees 41 against him, though he never held the lands there included, that he should relinquish a portion, giving such engagement for the remainder, which he accordingly sought to set aside, by a complaint in the criminal court, when he was referred to a civil suit. Opportunity was here afforded respondent to produce copy of this order, which during six months he has failed to do. It is obvious, that no measurement now made can be admitted to determine what lands were grazed, and what cultivated five years ago. While it is certainly wholly improbable that had such sum not been due, respondent would thus have taken it to the tehseeldar; yet more so, that the latter, in open cutcherry, would plunder him of it, preparing a wasil-baukee on the spot to justify such act of spoliation; but above all, that respondent would then and there execute a kubooleut, by which he has abided ever since. The decree of the moonsiff is therefore reversed, and a decree, with all costs, given the appellant.

THE 29TH APRIL 1848.

No. 18 of 1847.

Sudder Ameen, Mr. Noney.

Asaram Das, (Plaintiff,) Appellant,

versus

Lukheepathuk and others, (Defendants,) Respondents.

Sectulchunder Rae—Vakeel for Appellant.

Bamachurn and Gopee Mohun Burat—Vakeels for Respondents.

THIS is an action to recover rupees 664-10-6, value of kelai, sown in 315 beegahs by appellant, of which the produce was forcibly taken possession of by respondent and others. It appears that on the complaint of one Jeysunkur Bhuttacharij, under Act IV. of 1840, because of his ejectment by appellant from these lands, a summary award was made in his favour by the magistrate, and possession given on the 16th Sawun 1252; against which an appeal being preferred, this order was reversed, and appellant's possession finally affirmed by the session judge on the 26th of September; to which he was restored accordingly on the 5th Kartick 1252, as shown by his receipt of that date given the darogah. On which ground the sudder ameen dismisses the claim, it being impossible that the lands should be sown by the appellant in Assin as averred, while in the occupation of another.

In appeal it is urged, that the magistrate's award was placed in abeyance by the session judge, until the appeal was determined.

JUDGMENT.

That such interlocutory order issued from the sessions court, is probable, though copy has not been produced. But as it is seen from his receipt, dated the 5th Kartick, that the appellant was not actually reinstated until the issue of the final order of the session judge on the 26th September, the order of the magistrate must already have taken effect, to prevent such interposition, while the appeal was pending. The decision of the sudder ameen is therefore affirmed, the appeal being dismissed.

THE 29TH APRIL 1848.

Appeal No. 8 of 1847.

Sudder Ameen, Mr. Noncy.

A. Killwick, (Defendant,) Appellant,

versus

Chutoor Bhooj Patik and others, (Plaintiffs,) Respondents.

Seetul Chunder Rae—Vakeel for Appellant.

Munceroodeen—Vakeel for Respondents.

CLAIM to recover rupees 597-8-1, principal and interest, being balance of rent from 1248 to 1251. Which suit was remanded by this court, in an appeal from the decision of a former sudder ameen, on the 28th April 1846; wherein the respondent here sued Messrs. Canham, Killwick, and Cave, for rent of indigo lands, pleading that on resumption and assessment of these, the proprietor having refused, a lease was given to Mr. Melliss, on whose part respondent claimed rent from the appellant and others. The suit was dismissed by the sudder ameen, but remanded that the rent should be fixed by rates laid down at time of settlement; which being ascertained from the collector's papers, a decree was given in favour of respondent against the widow and representative of Mr. Killwick, deceased.

From this decision both parties appeal: the appellant here, because of the right so maintained to exact increase; the respondent, in the following number, because of the abatement in his claim thus made.

JUDGMENT.

The appellant, defendant below, claims to hold on a pottah obtained from the former lakherajdar, for 25 beegahs at a jummah of rupees 12-8. This pottah has never been produced, so that he became liable for rent of land held by him at the pergunnah rates,

as ascertained by the sudder ameen, but without local enquiry to determine the quantity of the land, which having now been made, its extent is found to be 28; and not 36 beegahs, as stated in the decree of the lower court, and the rent on the same 29 rupees; to which extent, therefore, the decision there given is modified, and rupees 116 decreed, with interest, as balance due to appellant.

No. 9 of 1847.

Sudder Ameen, Mr. Noney.

Chutoor Bhooj Patik and others, (Defendants,) Appellants,

versus

A. Killwick, (Plaintiff,) Respondent.

IN this case the plaintiffs below are appellants above, as stated in the preceding number, wherein their objections have already been considered; the award of the sudder ameen being amended.

ZILLAH SARUN.

PRESENT : H. V. HATHORN, ESQ., JUDGE.

THE 8TH APRIL 1848.

No. 15 of 1846.

A Regular Appeal from a decision passed by Pundit Lilladhur Tewarry, late Sudder Ameen of Chumparun, dated 14th April 1846.

Jaffer Khan, (Plaintiff,) Appellant,

versus

• Gopal Rai, (Defendant,) Respondent.

CLAIM to cancel a deed of sale dated 1st November 1844, value Company's rupees 365, being the amount purchase money.

This suit was instituted by appellant on the 18th September 1845, setting forth that he had contracted with respondent to sell him a one anna and one pie share of mouzah Poorun Chupra, pergunnah Mehsee, for Company's rupees 365, and had registered and delivered the bill of sale to respondent, but had not received the consideration stipulated therein, hence this suit to cancel the sale.

Respondent answered that the bill of sale had been duly executed, registered, and delivered to him, by plaintiff's agent, after the purchase money had been paid in full, and therefore this claim was not cognizable.

The sudder ameen decided that the claim was for several reasons not tenable, as after the deed of sale had been duly registered and delivered, the plea of non-payment was improbable; *secondly*, that the bill of sale specially mentions that the purchase money had been paid in full; and *thirdly*, that the names of the parties said to have been subsequently sent for the purchase money are not mentioned in the plaint, and their evidence does not support the appellant's statement to that effect, and therefore dismissed the suit with costs. Appellant appeals in dissatisfaction, urging that the transfer is not complete until the purchase money be paid, and the witnesses to the bond verify his statement that no consideration was received.

JUDGMENT.

I observe that the bill of sale is admitted by appellant to have been duly *executed* and *registered* by him, and afterwards *delivered* to the respondent. The bill of sale, moreover, distinctly mentions in very elaborate terms that "the whole of the purchase money had

been paid in full at one time in cash, and that not a cowree of the purchase money remained due by the purchaser." Now although it is customary to prepare bills of sale containing these expressions before hand, and also to register the deed for the satisfaction of the purchaser before the consideration is given, still it is quite unusual, and unaccountable that a vendor should *make over* such a deed of sale to the purchaser containing a distinct acknowledgment of payment, if in truth no consideration had been given, and that he should have abstained from enforcing payment after such delivery for a period of more than eight months. The respondent has in fact presented appellant's receipt for the amount, which receipt appellant acknowledges to have executed, and delivered to respondent. The delivery of the deed of sale containing such an acknowledgment of payment into the hands of the vendee renders the contract complete, and the vendor cannot afterwards retract.

ORDERED,

That this appeal be dismissed with costs, and the decision of the sudder ameen be affirmed.

THE 8TH APRIL 1848.

No. 16 of 1846.

A Regular Appeal from a decision passed by Moulvee Mahomed Rafiq, ex-officio Sudder Ameen of Sarun, dated 20th April 1846.

Kalipershad, (Defendant,) Appellant,

versus

Hunnoomanpershad, (Plaintiff,) Respondent.

CLAIM, Company's rupees 326, 9 annas, 6 pie, principal, and Company's rupees 48, 15 annas, 9 pie, interest, being the amount of a deposit in court, and for reversal of a summary order of the court dated 19th December 1844.

The particulars of this claim are as follows. Biddadhur and others sold *conditionally* to plaintiff and his brother Kalipershad, four houses in Dehyawan (Chupra,) for Company's rupees 650; but within the year of grace, prescribed by law, for the redemption of the property pledged, the venders deposited the amount in full, viz. Company's rupees 653-3, payable to Hunnoomanpershad (the plaintiff in this suit) and Kalipershad (defendant,) sons of Gungadeal Saho, (the deed of conditional sale having been executed in their joint names.) When the notice under Regulation XVII. of 1806 was served, Hunnoomanpershad applied for one half of the deposit as his rightful share, but Kalipershad had previously replied to the notice to the effect that the whole might be paid to their father, Gungadeal, who, as he stated, was the *real vendee*, saying that he was not interested in the matter. The father sided with his son Kalipershad, and petitioned

the court for the full amount. Under these circumstances, and, especially as Kalipershad, one of the payees, had refused to take his share of the deposit, the court, under date 19th December 1844, declined to decide upon the point summarily and struck the case off the file, notifying the same to the depositors in order that they might take back their money if they thought proper.

This suit is accordingly instituted by plaintiff to recover his half share.

The case is simplified by the death of Gungadeal, the father, who, as stated, might have been the real vendee, although the deed of conditional sale is executed in the name of his two sons; at any rate the two sons are now entitled to share equally in the amount deposited in court in their favor, and in accordance with the general distribution of the property left by their father to his sons in equal proportion.

The ex-officio sudder ameen has accordingly decreed one half of the deposit as claimed to plaintiff, absolving the vendors who unnecessarily were made defendants by precaution, and has adjudged the whole costs of suit, together with the interest of the deposit due to plaintiff, against Kalipershad, and against estate of the late Gungadeal Saho, excepting the costs of the vendors made payable by plaintiff.

Kalipershad appeals, dissatisfied with that part of the decree only which saddles him with the interest of the money due to his brother and the costs of suit; but I am of opinion that he is justly liable for both, in consequence of his having opposed the payment of the moiety due to his brother, the plaintiff, and thus rendered an action at law necessary.

ORDERED,

That this appeal be dismissed with costs, and the decision of the lower court be affirmed.

THE 13TH APRIL 1848.

No. 17 of 1846.

A Regular Appeal from a decision passed by Moulvee Mahomed Ruffiq, ex-officio Sudder Ameen of Sarun, dated 23d May 1846.

Iktear Rai, Outar Rai, Bugwan Rai, Bahadur Rai, and Devideen Rai, sons of Toolsee Rai, and Gundrup Rai and Sohawun Rai, (Plaintiffs,) Appellants,

versus

Rughonath Persad Tewary, purchaser, Sohode Rai, Ramnarain Rai, farmers on advance, Sohodowun Rai, Saheb Rai, and thirteen others, heirs of Hemon Rai, and Dirdoo Rai, son of Roopun Rai, (Defendants,) Respondents.

Bojraj, Teluck Patuck, and Omed Patuck, other farmers on advance, third parties.

CLAIM, for possession and registration of names in succession to Roopun Rai, and for division and separation of 6 annas and 8

gundahs share in the village Dhurrumpoora, pergunnah Baal, estimated Company's rupees 4,531-11-6, and for reversal of a summary award dated 30th July 1842.

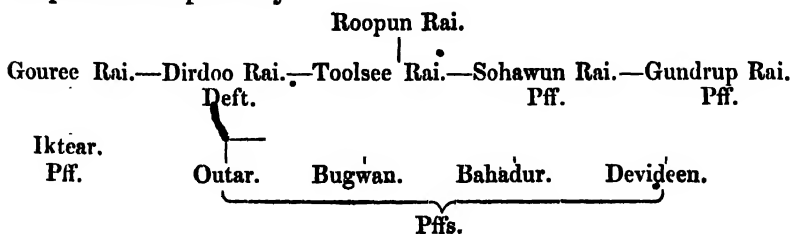
This suit was originally instituted on the 31st January 1843, and nonsuited by the principalsudderameen on the 17th August 1843, upon the grounds of improper valuation, but ordered, on appeal, to be re-filed and tried upon its merits, as the amount of action was deemed rightly computed at three times the sudder jumma of the fractional portion under litigation.

The claim of appellants (plaintiffs) has now been heard by the lower court and dismissed upon its merits, and this appeal is preferred in dissatisfaction.

The following is an abstract statement of the case. Roopun Rai and Hemon Rai, two persons, lent Shahamut Ali Khan, rupees 10,000, in consideration of which Shahamut Ali sold conditionally the entire estate of mouza Dhurrumpoora, pergunnah Baal, under date 5th January 1811, which sale was to be cancelled when the debt was repaid. Roopun, one of the vendees, died, after which Shahamut Ali, on the 27th August 1818, took other rupees 3,250 from Dirdoo Rai, one of the five sons of Roopun Rai, and sold him outright a moiety of the estate for rupees 8,350, giving him credit for rupees 5,000 (the half of rupees 10,000) previously received from his father. (It is stated that Shahamut Ali in like manner sold the remaining half share to Hemon Rai, but which is not under litigation in this suit.)

After a period of twenty-three years, viz. in 1840, the rights and interests of Dirdoo Rai in the said estate were sold in execution of a decree of court obtained by Ramdhun Rai *versus* Dirdoo Rai, and purchased by Rughoonathpershad, upon which the brothers and nephews of Dirdoo Rai institute this suit for their share of the property (6 annas 8 gundahs) declaring it to have been *joint property* and to which they are entitled by right of inheritance, on the death of Roopun Rai, their ancestor.

The following table exhibits the relationship of Dirdoo Rai and the plaintiffs respectively:—



The suit is defended by Rughoonathpershad, the purchaser of the rights and interests of Dirdoo Rai, and by Sohoder and Ramnara, peshgidars, (or farmers in possession on advances,) who severally

maintain that the property, viz. the moiety sold in the name of Dirdoo Rai, belonged exclusively to him. Dirdoo Rai, as a matter of course, sides with his brothers, the plaintiffs, *probably* in order by this means to recover a portion of the property sold in liquidation of his debts.

The descendants of Hemon Rai, are made defendants in this action by way of precaution, who state that they are not in any way affected by this claim, and should not have been made parties to the suit; and the farmers in possession state that their engagements were made exclusively with Dirdoo Rai, the proprietor of an 8 annas share. Sohoder Rai, peshgidar, files copy of an "ikrarnamah" dated 27th August 1818, corresponding with the date of Dirdoo Rai's bill of sale, purporting to have been executed by Dirdoo Rai, agreeing to cancel the sale, if the purchase money be repaid by the end of Bhadoon 1239 Fussily; but the original is not filed and the fact of its being a conditional sale is opposed to Dirdoo Rai's statement, and it mentions the transfer of names in the collector's office, which is not the case, I place no reliance upon the validity of this document itself in his favor.

The principal sudder ameen observes that plaintiffs admit that the sale was made in Dirdoo's name *alone*; that plaintiffs have adduced no documentary proof of *joint* possession; that Dirdoo's confession of judgment *after* his right had been sold is of no avail, and the oral evidence adduced and report of the ameen deputed in the summary suit, are contradictory and unsatisfactory; and as the sale to Dirdoo alone is clearly established by the bill of sale, he, the principal sudder ameen, dismisses the claim with costs, the third parties in the suit to pay their own costs.

JUDGMENT.

Plaintiffs in this case appear to found their claim to four-fifths of a moiety of the estate purchased by Dirdoo Rai upon the assumption of two facts, firstly, that rupees 5,000 of the purchase money having been paid by their ancestor Roopun Rai, the estate became *ancestral* property, and secondly, that the balance of purchase money, rupees 3,250, paid by Dirdoo Rai, was obtained from *joint funds*. It must however be borne in mind that the original sale of the estate to Roopun Rai and Hemon Rai, conjointly in 1811, is admitted to have been a *conditional* sale, redeemable at any time upon repayment of the loan advanced, and was *not made absolute in the life-time of Roopun*, the plaintiff's ancestor; the estate cannot therefore be styled *ancestral* property. It is true that 5,000 rupees of the purchase money given by Roopun in his life-time upon a mortgage of the estate, has reverted to one of the sons to the prejudice of the rest, but it was determined by the Sudder Dewanny Adawlut in 1816, (*vide Reports*, vol. II., page 214,) upon a full discussion of the subject that although an unequal distribution of ancestral immovable

property cannot be maintained by Hindoo law, yet the unequal distribution of *acquired* property and also of *movable* ancestral property is both legal and valid.

I am therefore of opinion that the part payment of rupees 5,000 by the father, regarding it as a payment in favor of one of the sons, being *personal acquired* property, was legal; and the real property thus acquired by the son with a part of the personal property given by the father in his life-time, added to cash provided by himself, cannot be claimed by the remaining sons as ancestral property.

In regard to the second plea, viz. that the remaining assets, viz. rupees 3,250, paid by the son, were obtained from jointfunds, I have to observe that appellants (plaintiffs) have adduced no documentary proof in support of this assumption. The oral evidence collected by the ameen in the summary suit (in consequence of the objections taken by plaintiffs to the sale) as well as the testimony of the three witnesses taken by the lower court, is both contradictory and unsatisfactory, being for the most part hearsay evidence and evincing no personal knowledge of the assets realized and mode of their collection and distribution. Gomanee, who was the village putwary for several years, declares Dirdoo Rai to have been the sole malick of the estate, and plaintiffs he describes as cultivators. For the above reasons I see no reason to interfere with the decision of the lower court, which upholds the sale to Dirdoo Rai as an exclusive purchase, and which rejects the claim of plaintiffs to participate as joint proprietors.

ORDERED,

That this appeal be dismissed with costs, and the decision of the ex-officio sudder ameen be affirmed.

THE 13TH APRIL 1848.

No. 18 of 1846.

A Regular Appeal from a decision passed by Moulvee Mahomed Rafiq, ex-officio Sudder Ameen of Sarun, dated 23d May 1846.

Purrcag Dut Pandey, for self, and guardian of Sheodeen Pandey, grandson of Rugobuns Dut Pandey, (Plaintiff,) Appellant,

versus

Purmesshur Dut and five others, (Defendants,) Respondents.

CLAIM, for possession of 25 beegahs of "birt" land, situated in a 4 anna share of Juggutpoor, pergunnah Burreye, with rupees 68, 9 annas, 6 pie, mesne profits, total valuation Company's rupees 720.

Plaintiff states that his uncle, Rugobuns Dut Pandey, obtained the grant of 25 beegahs of "birt" land from Musst. Bulkowur, widow of Degumber Sing, who was a 4 annas sharer of the village Juggut-

poor in which the land under litigation is situated. The sunnud, or deed of grant, is dated 11th May 1225 Fussily, or 1818 A. D., subsequent to the Company's accession to the Dewanny, which of itself renders the grant of rent-free land invalid.

Defendants are purchasers of the share of the estate from Bunwari Lal and Naraindut, to whom the share was mortgaged, and by whom it was foreclosed, and who subsequently obtained a decree of court for possession as proprietors. They urge that the transfer of rent-free land by the former proprietor in 1818 A. D., (1225 Fussily,) under the provisions of Section 3, Regulation XIX. of 1793, was illegal.

The sudder ameen, upon the grounds urged by the defendants and for other reasons set forth, dismissed the claim.

An appeal is preferred, arguing that in the bill of sale to Bunwari Lal and Naraindut Saho for Musst. Bulkowur's quarter share, all lands *exempted by law* were excepted—"sawae mustusni shareyeh;" further that the law quoted is irrelevant, and the decree of the principal sudder ameen, dated 5th December 1842, upheld appellant's right and title.

JUDGMENT.

Upon a reference to the record I find that suits connected with this identical land have been before instituted and decided as follows: First, appellant (probably surreptitiously) sued his cultivator, Luchmee Rai, for rent, and, on the 4th September 1840, obtained a decree upon Luchmee's confession of judgment, upon which respondents instituted a suit to reverse the above decree as the land had been styled *rent-free* without enquiry. This was also decreed on the 16th August 1842. This latter suit, however, was appealed, and the principal sudder ameen, on the 5th December 1842, reversed both decisions as the nature of the tenure, whether "*birt*" or otherwise, had not been determined. This last decision is quoted by appellant as upholding his right, but in fact it left the question of right and title still undetermined, and as respondents were no party to the suit for rent, their interests could not have been affected. The present suit is now instituted directly to try the issue of right and title to hold this land *rent-free* under a "*birt*" tenure. The collector reports, under Section 30, Regulation II. of 1819, that his rent-free registers which are of a *prior* date do not of course mention the land, but the canoongoe's list of miscellaneous "*birt*" land, submitted in 1226 Fussily, records the 25 beegahs as "*birt*"⁴ in possession of Rugobuns Dut.

It is sufficient to observe that this unregistered grant, dated 11th Maug 1225 Fussily (or 1818 A. D.,) having been made since the 1st December 1790, is under the provisions of Section 10, Regulation XIX. of 1793, null and void, and the present proprietor of the estate is entitled to the rent of such land at the pergunnah rates.

ORDERED,

That this appeal be dismissed with costs, and the decision of the lower court be affirmed.

THE 19TH APRIL 1848.

No. 20 of 1846.

A Regular Appeal from a decision passed by Moulvee Mahomed Rafiq, ex-officio Sudder Ameen of Sarun, dated 23d July 1846.

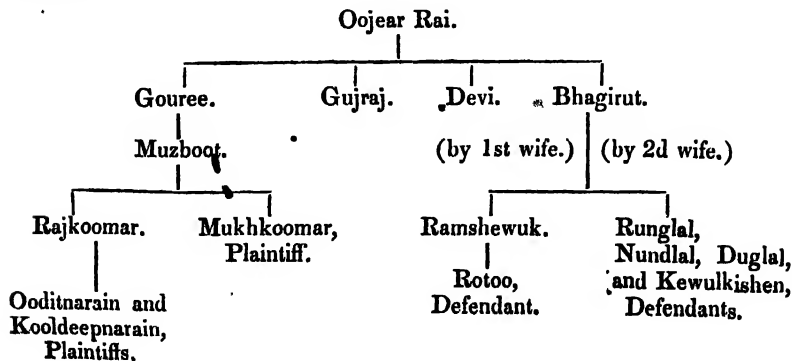
Muhkoomar Rai, Ooditnarain Rai, and Kooldeepnarain Rai, (Plaintiffs,) Appellants,

versus

Runglal Rai, Nundlal Rai, Duglal Rai, Kewulkishon Rai, and Rotoo Rai, and Dhyan Rai and others, by precaution, (Defendants,) Respondents.

CLAIM, for possession of a moiety of the ancestral and acquired property in Ragoopoor Doomree, Rampoor Singha, chuck Aladar, and chuck Kurrungalal, in possession of defendants; estimated value, Company's rupees 367-14-6 $\frac{1}{2}$.

This suit was instituted on the 13th May 1845, setting forth that the ancestral property consisting of 1 anna, 2 dams, and 2 cowrees in Ragoopoor, and 4 dams and a fraction in Doomreebazoorg, formerly belonged to Oojear Rai, their common ancestor, and that 2 annas, 10 dams, and 2 cowrees in Ragoopoor, and 5 annas 4 pie in Rampoor Singha, and 1 anna 9 pie in chuck Aladad, and 1 anna 9 pie in chuck Kurrungalal, was the acquired property of *Devi Rai*, that Gujraj and Devi Rai having died without issue, they (the plaintiffs) became entitled to share the ancestral and acquired property with defendants equally, as will be apparent by the subjoined family tree; but that defendants had usurped more than their rights, hence this suit:



Defendants admitted the plaintiffs' statement respecting the ancestral property, but plead that Devi Rai adopted Runglal (defendant,) in consequence of which plaintiffs were not entitled to more than one-third of the ancestral property; and that the acquired property was obtained by Bhagirut and not Devi Rai; and that the property was before disputed between Bhagirut and Rajkoomar in 1805, when Rajkoomar, the ancestor of two of the plaintiffs, executed a deed of adjustment, agreeing that he should retain one-third of the ancestral property and Bhagirut and Devi Rai the other two-thirds, and of the acquired property two-fifths was to be Bhagirut's share and one-half each to belong to Rajkoomar and Devi Rai respectively.

In support of defendants' exposition of the case, Runglal's "warasutnameh," dated 20th January 1821, as the adopted son of Devi Rai, filed in the collector's office, and the collector's proceeding directing the transfer of Runglal's name in succession to Devi Rai, dated 13th February 1826, (after due notice given to other claimants without any objections being preferred by plaintiffs or others,) were filed, and two bills of sale to Bhagirut, dated in 1195 and 1198 Fussily, executed by Jeonarain, in proof of his having purchased the acquired property, and not Devi Rai, as set forth by plaintiffs; and Rajkoomar's "ikrarnamah," adjusting the share as above indicated, dated 5th August 1805, was also filed having the appearance of authenticity, but with reference to lapse of time witnesses were not forthcoming to attest these old title deeds.

Opposed to these written documents plaintiffs produced an extract from the collector's office, showing that Devi Rai and Ramnarain's names stood recorded amongst the proprietors of Ragoopoor and Rampoor between the years 1212 and 1216 Fussily, in succession to Bucktaur Rai, a former ancestor. This and certain village accounts of 1233 and 1247 Fussily in proof of co-partnership, and the testimony of four witnesses to substantiate plaintiffs' joint possession, was all the evidence adduced.

The sudder ameen, in consideration of these allegations and documentary and oral proofs brought forward by the parties respectively, and advertng especially to the contradictions of the evidence in regard to possession, dismissed the plaintiffs' claim with costs, being of opinion that the claim was groundless and unsupported by the requisite proofs, and that defendants had fully proved their case. After giving due consideration to the objections taken by appellants against the decision of the lower court, I am of opinion that the weight of evidence, both oral and documentary, is in favor of defendants' exposition of the case, therefore plaintiffs must be satisfied with possession of the share of the property ancestral and acquired as admitted by defendants.

ORDERED,

That this appeal be dismissed with costs, and the decision of the ex-officio sudder ameen be affirmed.

THE 19TH APRIL 1848.

No. 21 of 1846.

A Regular Appeal from a decision passed by Moulvee Mahomed Rafiq, ex-officio Sudder Ameen of Sarun, on the 23d July 1846.

Muhkoomar Rai, Ooditnarain Rai, and Kuldeep Rai, (Defendants),
Appellants,
versus

Runglal, (Plaintiff,) Respondent.

CLAIM, Company's rupees 61, 5 annas, 3 pie, principal and interest, on account of share of Government revenue due from defendants in 1251 Fussily to Phagoon 1252 Fussily.

Plaintiff instituted this suit in the court of the moonsiff of Pursa, on the 8th December 1845, but which was afterwards transferred to the principal sudder ameen's court on the 28th April 1846, at the requisition of the parties in consequence of another suit, No. 20 of 1846, pending, regarding the adjustment of their respective shares.

I find, upon referring to the record, that plaintiff states that he paid into the collector's office, rupees 25, 4 annas, 3 pie, on account of defendants in 1251 Fussily, and rupees 32, 12 annas, 3 pie, on account of 1252 Fussily, making a total of rupees 58, 0 anna, 6 pie, for which he sues with interest.

Defendants deny the plaintiff's allotment of the Government revenue, claiming one-half of the whole ancestrel and acquired property as detailed in case No. 20, (preceding,) and thus his share of the revenue of Rampoor Singha would amount to rupees 97 and 2 annas.

The sudder ameen passes a decree in favor of plaintiff upon the evidence of two witnesses, Jageerlal and Ramdehul Singh, and two "dakillas," or receipts from the collector's office, for rupees 109-4-12, dated in 1252 Fussily. But neither the "dakillas" nor the evidence attest or correspond with the plaintiff's claim. The only document filed in support of the plaintiff's case is the putwarry's account, which exhibits a balance against defendants as stated; but this document is not alluded to in the sudder ameen's decision, although it is evidently the foundation of the plaintiff's claim. I observe also that no replication was filed by plaintiff in this case, and although by Act XVII. of 1847, the default of plaintiff must be held to be cured, (the opposite party and also the court having passed over the default,) nevertheless the neglect should have been noticed as the replication was material to the issue of the case. Considering the proceedings of the lower court to be incomplete, and the decree based upon insufficient grounds,

ORDERED,

That this appeal be decreed with refund of stamp duty, and the case be returned for re-trial, and the costs to be adjusted hereafter.

THE 19TH APRIL 1848.

No. 24 of 1847.

A Regular Appeal from a decision passed by Moulvee Waheed-oodeen, Moonsiff of Sewan, dated 16th January 1847.

Sha Buddec-oodeen, Sha Kuttubodeen, and Sha Fyzbuksh, (Plaintiffs,) Defendants,

versus

Sha Gohur Ali and Sha Yar Ali, sons, Bebee Abzanee, widow, Bebee Bekon and others, daughters (of Shah Hoseinoodeen,) Inait Kurreem, (agent,) sellers, and Lalla Sheosohaye, purchaser, (Defendants,) Respondents.

Sha Shareefoodcen and Mazhur Hoscin, Claimants.

CLAIM for possession of a 1 anna, 12 gundahs, 2 cowrees, 3 bowree share in the entire mouza Chateebukhtear, pergunnah Bareh, by right of pre-emption, value Company's rupees 111, annas 15, cowrees 8, krant 16, masant 11, decimals 9.

Plaintiffs represented themselves to be the proprietors of a moiety of the village and lessees of other 2 annas and a fraction share on an advance of rupees 1,475, made to Gohur Ali and others, the proprietors of the remaining half share; of this advance 775 rupees was stated to have been paid in cash, and the balance, 700 rupees, remained with plaintiffs, to pay off Bunead Lal (father of Sheosohaye,) the former "peshgidar."

Plaintiffs set forth that, notwithstanding the interest thus acquired by them in the village on the score of *partnership* and vicinage, Gohur Ali and others had now sold to Lalla Sheosohaye a 1 anna, 12 gundahs, 1 cowrie, 1 masant share for rupees 1,801, bearing date 23d August 1846, which they claim to purchase by right of pre-emption, or "huq shoofa;" that on the 4th October 1846 (12th Shawal 1262, Hijeree) they heard of the sale, and immediately declared their intention to purchase, and tendered the full amount of purchase money in the presence of witnesses to the sellers, but the sellers and purchaser had both declined to cancel, or transfer the sale to them, on which account this suit is instituted on the 23d October 1846, to establish their right of pre-emption.

Sheosohaye, the purchaser, observes that plaintiffs' claim is not cognizable, not having been preferred until two months after the sale, and that plaintiff admits having taken no steps until the 4th October 1846, and the declaration of intention to purchase is required within a month.

The sellers, Gohur Ali and others, admit executing a seven year lease of 2 annas share in favor of plaintiff, running from 1253 to 1259 Fussily, for an advance of rupees 1,475, but say that plaintiffs failed to liquidate the prior loan due to Bunead Lal as agreed, and therefore they had sold the share in dispute to Sheosohaye Lal.

Sha Shareefoodcen (a third party) also claims the disputed share by pre-emption, but has adduced no proof, and his right cannot be affected by this decision. Muzhur Hosein, (a fourth party,) claims 1 beegah, 5 cottahs, leased to him by the proprietors for 100 rupees, which claim it is also unnecessary to consider in this case.

The moonsiff of Sewan referred the *entire* record to the law officer of the court, directing him, with reference to the plaint and the depositions of the witnesses taken, to report whether the conditions of the law had been fulfilled or not. The law officer, Moulvee Ehsan Ali, reported that the "*ishtishhad*," or affirmation by witnesses, was proved, but the "*tulub-i-mowazib*," or proof of immediate demand, was wanting.

The law officer, upon a second reference made by the moonsiff, added that proof of declaration of intention might be proved either by "*deanut*," or "*kazaen*," viz. by solemn affirmation, or by evidence. Upon the receipt of this exposition of the law, the moonsiff dismissed the claim, briefly observing that this was a "*huq shoofa*" case, and the moonsiff had declared that the "*tulub-i-mowazib*" was not proved by the evidence adduced.

Appellants urge that the law officer had omitted to read the entire evidence, or otherwise he would have found by the evidence of Chakouree and Sha Shareefoodcen and others that an "*immediate claim*," on hearing of the sale, had been made.

JUDGMENT.

The mode of referring this case to the law officer appears to me irregular. Moonsiffs are required in cases of doubt respecting the succession to landed property according to Mahomedan law to obtain an exposition of the law from the law officers of the zillah court, and for that purpose are to transmit "*a written abstract of the case*," (Clause 2, Section 6, Regulation V. of 1831,) but the moonsiff of Sewan submitted *the entire record, not upon any doubtful point of law*, but to obtain the opinion of the law officer upon the *merits of the case*. And upon that opinion, which, I think, is erroneous, the moonsiff has rejected the claim. The general mode of referring points of law to law officers is set forth in Section 16, Regulation IV. of 1793, viz. "*a statement of the facts, in which the question of the law may arise is to be made out in writing and signed by the judge of the court and delivered to the cazee or pundit for his opinion upon it*," &c. ; and the courts are "*strictly enjoined not to order or allow of a report of any matters of fact relating to any cause depending before them with a view to passing a decree*," exception being had to references "*made to the law officers on any point concerning Hindoo or Mahomedan law*."

I fully concur with the law officer in his exposition of the requirements of the law in such cases, but I differ respecting the value of the evidence adduced in this case in proof of the fulfilment of the

law. According to Mahomedan law, in order to establish the "tulub-i-mowazibut," or immediate demand, it is necessary that the person claiming this right should declare his intention of becoming the purchaser immediately on hearing of the sale, and make affirmation by witnesses of such his intention either in the presence of the seller, or of the purchaser, or on the premises. (Vide Macnaghten's Mahomedan Law, page 48, clause 7.)

Now I find on referring to the record that eight witnesses (including Sha Shareefooddeen and Chakource,) have deposed to the fact that Kuttubooddeen (one of the plaintiffs) *on hearing of the sale immediately* declared before witnesses his intention to purchase by right of pre-emption, and *on the same day* (12th Eed 1262, Hijeree,) went to Gohur Ali and Yar Ali, and offered the purchase money, rupees 1,801, in cash, which they notwithstanding refused to accept, and subsequently, a message was sent to persuade the purchaser to give up his purchase, but he in like manner declined. Such being the case I am of opinion that the requirements of the law have been strictly fulfilled, and plaintiffs are fully entitled to possession by right of pre-emption on paying a sum equal to that paid by the purchaser. An appeal was accordingly admitted, on the 22d March 1848, and notice served on the remaining respondents, amongst whom the purchaser alone urges, in appeal, that the statement of Chakource and the other witnesses who have given evidence in this case is untrustworthy and conflicting; but on referring to the record, I do not find that their depositions vary on any material points.

IT IS THEREFORE ORDERED,

That this appeal be decreed, and the decision of the moonsiff of Sewan be reversed, and plaintiffs, within ten days from this date, do either pay to the purchaser, or deposit in this court on his account, the sum of Company's rupees 1,801, which will entitle them to possession of the share claimed. The costs of plaintiffs in both courts to be liquidated by the proprietors, Gohur Ali and others; and the remaining defendants, including third parties, to pay their own costs.

THE 20TH APRIL 1848.

No. 22 of 1846.

A Regular Appeal from a decision passed by Moulvee Mahomed Rafiq, ex-officio Sudder Ameen of Sarun, dated 20th July 1846.

Kalipershad Saho, (Plaintiff,) Appellant,

versus

Bhekh Pandeh, (Defendant,) and

Bydinath Narain Sing, Bukshish Ali, Hursahaye Sing, and Himut Sahaye Sing, (Defendants by precaution,) Respondents.

CLAIM, Company's rupees 498, 13 annas, 6 pie, being the principal and interest of a balance of rent due on account of a moiety of Moosapoor, pergunnah Burreye, from 1248 to Cheyt 1251 Fussily.

This suit was instituted on the 5th May 1845. It appeared from plaintiff's statement that a moiety of the two estates, Moosapoor and Soonear, were originally let in farm by the proprietor, Bydinathnarain to Gungadeal Saho, (plaintiff's father,) from 1234 to 1237 Fussily, inclusive, for an advance of Sicca rupees 1,601, and that Gungadeal, the father, who continued to farm the estates after 1237 Fussily, under-let Moosapoor to Bhekh Pandeh upon a written engagement, and that the said Bhekh Pandeh paid rent up to 1240 Fussily, after which the farmer states that notwithstanding the lease had expired Bhekh Pandeh, his under farmer, agreed on the 9th Asin 1241 Fussily, to hold on at a yearly rental of rupees 560 per annum. Meanwhile the village Soonear was released by payment of the advance, but Moosapoor is stated to have been re-let to Gungadeal, plaintiff's father, for a further advance of rupees 1,274 for three years viz. 1243-44-45, and the "kutkinadar," plaintiff adds, agreed to remain in possession as his under farmer upon the same terms. The farmer goes on to say that the "kutkinadar" continued to pay rent up to 1248 Fussily, when he became a defaulter. The present suit is for arrears of rent from 1248 *Fussily* to *Chey*t 1251 *Fussily*, with interest and exchange and a ratable share charged for repairing embankments in 1249 Fussily, amounting to rupees 98, 6 annas.

The defendants by precaution are Bydinath's farmers in possession after the lapse of plaintiff's interest in the farm by receipt of the advance made to the proprietor.

These farmers as well as Bydinath, the proprietor, state that plaintiff's farming engagement for the half of Moosapoor ceased in *Chey*t 1251 Fussily, when the advance was deposited in court, and therefore they are in no way implicated in this suit.

Bhekh Pandeh, the "kutkinadar," or under farmer, states, in defence, that his lease expired with the year 1245 Fussily, up to which period he had paid his rent in full, and this claim for rent for a subsequent period upon an alleged *verbal* agreement was without foundation.

The sudder ameen rejects the claim, observing that the "kutkinadar's" interest ceased in 1245 Fussily; and that the continuance of the lease upon a verbal understanding between the parties is *not* supported by the necessary proofs,—considering the collectorate proceeding, dated 17th August 1842, cited by plaintiff, calling upon Bhekh Pandeh to pay up the *putwarry's wages*, quite insufficient, as it referred to a dispute in regard to wages in 1245 Fussily, when the "kutkinadar" admits being in possession and not subsequently.

JUDGMENT.

This claim for arrears of rent from 1243 to *Chey*t 1251 Fussily rests entirely upon the assistant collector's proceeding of the 17th August 1842 (or 1249 Fussily,) for the under farmer himself denies having been in possession, and plaintiff (the farmer) is unable to produce any counterpart lease from Bhekh Pandeh, indeed he admits that the

continuance of the lease after 1245 Fussily was upon a *verbal* agreement. Upon referring to the assistant collector's proceeding, above noticed, I find that it records certain measures taken to enforce the putwarry to file his half yearly papers, and that he pleaded non-payment of wages as an excuse, upon which the assistant collector, upon the admission of Bhekh Pandeh's mooktar to having been in possession since 1241 Fussily, awarded the arrears against Bhekh Pandeh from 1241 to 1249 Fussily, but there is nothing in the proceeding to justify an inference that Bhekh Pandeh was in possession of the farm *after* 1245 Fussily. The only remaining proof adduced is the evidence of four witnesses, whose testimony in regard to a demand of rent in 1250-51 Fussily is very indirect and insufficient, and is opposed to the putwarry's statement, which declares the village to have been under "khas" management in 1246 Fussily. Appellants have no written document to produce in proof either of *contract, possession, or part payment of rent after* 1245 Fussily, and the oral evidence adduced in support of possession does not of itself substantiate this claim for arrears of rent from 1245 to 1251 Fussily inclusive.

ORDERED,

That this appeal be dismissed with costs, and the decision of the lower court be affirmed.

ZILLAH SHAHABAD.

PRESENT: HENRY BROWNLOW, Esq., JUDGE.

THE 15TH APRIL 1848.

No. 104 of 1846.

Original Case.

Bur Muheshur Buksh Singh, (D.,) Plaintiff,

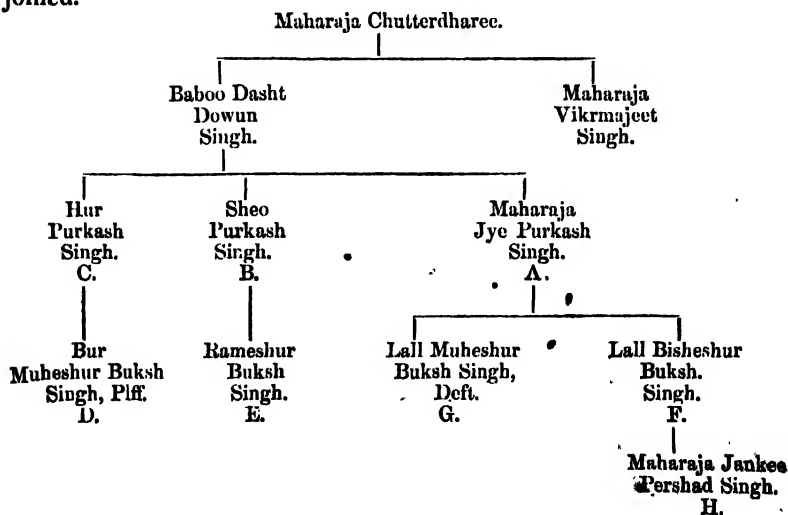
versus

Lall Muheshur Buksh Singh, (G.) and others, Defendants.

THIS case was originally instituted in the principal sudder ameen's court of this district on the 30th July 1846, under permission duly obtained from the Sudder Dewanny Adawlut, in conformity with the Circular Order of the 11th January 1839, the greater part of the property sued for being situated in this zillah, but was subsequently withdrawn from thence for decision by the judge, agreeably to the orders of the Superior Court, dated the 3d August 1847.

Plaintiff sues for possession of a moiety of the estates appertaining to the raj and domain of Doomraon, and to be recorded as proprietor of the same in the registers of the different collectorates, as well as to recover the same proportion of all the movable property, cash, cattle, &c. &c., left by the late Maharaja Jankee Pershad Singh, valuing his suit at rupces 38,39,121-3-6-7.

Genealogical tables have been filed by both plaintiff and defendant, tracing back the family to a very ancient date; these will be found with the record of the case; it will be sufficient, however, for a full comprehension of what follows to confine ourselves to the sub-joined.



It will be thus seen that A. B. and C. were the three sons of Baboo Dasht Dowun Singh, who was himself the brother of Raja Vikrmajeet Singh ; this latter person died without issue and was succeeded in the raj by his nephew A.—B. had one son (E.) a former aspirant to the raj, and C. had one son (D.) the present plaintiff.

A. on the other hand had two sons (F. and G.) F. died in the life time of his father, leaving a son (H.) who succeeded to the raj on his grandfather's demise.

H. however, died both childless and intestate, followed by his uncle G., who is still living, and is the principal defendant on the present occasion.

The case, therefore, essentially lies between the two cousins or D. *versus* G., the other defendants taking but a very secondary part in the proceedings.

The substance of the plaint is as follows:—"That Maharaja Jye Perkash Singh, Sheo Perkash Singh, and Hur Purkash Singh, were three uterine brothers ; that Maharaja Jye Perkash Singh had two sons, viz. Lall Bisheshur Buksh Singh, the eldest, and Lall Muheshur Buksh Singh, (defendant in the present case,) the youngest. That Baboo Sheo Perkash Singh, being for a time childless, adopted his nephew, Lall Muheshur Buksh Singh, (defendant,) but subsequent to this act a son was born to him, named Lall Rameshur Buksh Singh. That Hur Perkash Singh had issue, viz. Burmeshur Buksh Singh, the plaintiff. Lall Bisheshur Buksh Singh having died during the life time of his father, left a son, by name Jankee Pershad Singh. That this person (a minor) in virtue of a deed executed by his grandfather succeeded to the raj and property entire, under the guardianship of the defendant, duly appointed under that deed. That after a time Maharaja Jankee Pershad, accompanied by his guardian, went on a pilgrimage to Juggernath, but died on his return from thence on the 30th Bysack 1250. That defendant, being the guardian and manager, usurped the raj and title to the property. That upon the return of defendant, to Doomraon, the plaintiff asserted his right to a moiety of the raj and was promised the same by the defendant, on the termination of the suit then pending between Lall Rameshur Buksh Singh, and the defendant, for the whole of the raj. That after a time these litigants amicably adjusted their differences and the proceedings were accordingly quashed ; but the promise to the plaintiff remaining unfulfilled, he has been obliged to have recourse to the present suit.

The ground of action is, that the defendant, being the adopted son of Baboo Sheo Perkash Singh, is debarred by the Hindu law of inheritance from succeeding to the raj, inasmuch as an adopted son never succeeds to the estate of either his own father, brother, or nephew, the late raja standing in the latter relationship to the

defendant. That as the immediate predecessor of the defendant died without issue, the right of succession by the Hindu law should be in the proportion of one half to the sons of Sheo Perkash Sing, viz. the defendant his adopted son, and Lall Rameshur Buksh Singh, the son of his body and the other half to the plaintiff, as the son of Hur Perkash Singh—the Meetachurra and other Shasters and Macnaghten's Hindu Law being cited as authorities.

The defendant on the other hand urges "that the raj, of which plaintiff claims a moiety, has from time immemorial been indivisible; the prevailing custom and usage being for the senior member of the family to be in possession of the raj and the others to derive a suitable maintenance only. That the acquiescence of Sheo Perkash Singh and Hur Perkash Singh, in this usage was evident when Maharaja Jye Perkash Singh, the senior of these uterine brothers, held sole and entire possession of the raj, the juniors only enjoying such allotment as was provided for them by the chief, and that the deed of relinquishment executed by them in 1244, was sufficiently indicative of this. That upon defendant succeeding the late raja and assuming the title, the plaintiff, with a numerous collection of friends and relatives, affixed his signature voluntarily to a deed in acknowledgment of defendant's right to succeed. That Sheo Perkash Singh also presented a petition to the courts to give publicity to the event. That had the plaintiff any just and lawful right to the raj, he would indisputably have advanced his claim at the time when the question of succession was in summary litigation under Act XIX. of 1841, at the instance of Lall Rameshur Buksh Singh. That the plaintiff having conformed to an established usage during the life time of defendant's predecessor, and having also acknowledged defendant's right to succeed, vitiates his claim to a division of the raj. The defendant denies also being the adopted son of Sheo Perkash Singh, remarking that the plaintiff has advanced no proof in support of the assertion, while on the other hand, Sheo Perkash Singh himself denied it at the time when his own son, Rameshur Buksh Singh, was an aspirant to the raj, and that upon such repudiation the defendant was maintained in his right. That the plea of adoption is further refuted by the plaintiff having witnessed the "farkhuttee" of Sheo Perkash Singh as well as the "wurasutnama." That even admitting the adoption his right remains unaffected, inasmuch as by a precedent of the Sudder Court, dated the 21st August 1807, it is distinctly ruled that in the event of there being no heirs, an adopted son succeeds to the estate of his natural father, and again, that under the allotment of maintenance made by Maharaja Jye Perkash Singh, the assignment in the equal proportion made to each would have been disputed, had the adoption been a fact. In that case the defendant and Rameshur Buksh Singh would have been jointly sharers of one portion, and plaintiff himself of the other.

Defendant denies having made any promise of partition to the plaintiff, alleging that when he was contending with Rameshwar Buksh Singh for the entire raj, it is not to be supposed that he would have hazarded his right, by promising to admit a shareholder, but on the contrary that plaintiff presented a petition to the collector to have defendant's name recorded in the book of mutations as the legitimate successor to the raj, and himself as proprietor only of those estates which were formerly allotted to him for his own maintenance and support, the revenue of which he always liquidated to Maharaja Jankee Pershad during his life time, and since his demise to defendant himself for some period. The great Durbungha case with several others is quoted in proof of family usage having been upheld by the Sudder Court.

The replication disallows any analogy between the suit at issue and that of Durbungha on the ground that the late Maharaja Jankee Pershad executed no deed before his death regarding the succession, or in favor of the defendant. It affirms that by usage the division of the raj has always obtained, inasmuch as upon the demise of Raja Roodur Singh, one of the ancestors of the family, without issue, the son and grandson of Baboo Nirmul Singh, to wit, Baboo Mandata Sha and Sodhan Singh, were successors to the property in equal shares, and again, in support of partition, that the circumstance of mouzeh Bahorumpoor, a component part of the raj property, appears to this date in the collector's records as the joint property of Rajas Jye Perakash and Jankee Pershad Singh, to the extent of $\frac{2}{3}$ for them and $\frac{1}{3}$ for Baboo Kour Singh ; add to which the fact of the fort at Doomraon being held by the parties now litigating and that of Buxar by Oodut Perakash Singh, these individuals being severally and individually members of one and the same family. Decisions are then quoted of the Sudder Court to show that family usage has been disregarded in the cases cited.

Plaintiff denies having witnessed the wurasutnamah as well as the petition said to have been presented by him praying for the mutation of defendant's name, as raja, denouncing his signature to be a forgery, as also that of Ranee Muhraj Kour, the relict of the late Maharaja Jankee Pershad, she being dangerously ill at the time. Plaintiff reiterates the adoption of defendant under the class "dattaca," and argues that otherwise, being the heir apparent, he would not have been selected as the guardian of his predecessor during his minority, referring to deeds in proof of the adoption. Plaintiff then urges that the deed of relinquishment on the part of Sheo Perakash Singh and Hur Perakash Singh in favor of their elder brother, recognizing him as the raja, as also the assignment by Raja Jye Perakash in favor of Jankee Pershad, cannot prejudice his claim, since Raja Jankee Pershad died without issue, and without having executed any deed disposing of the raj, as his predecessor had done ; that the question of succession

therefore is necessarily open *de novo* to determination and allotment.

Defendant rejoins to the effect that the decision in the Durbungha case is based on family usage disallowing a distribution of the property, and not as alleged by the plaintiff upon the deed of succession or will, filed in that suit, since the Hindu law current in Bengal and Mithila invalidates every deed of such a nature.

The division of the raj between Mandhata Sha and Sodhan Singh is denied, and a decision of the Sudder Dewanny Adawlut, of the 9th November 1816, in the case of Tej Buhadoor Singh *versus* Sahibzada Singh, is adduced as upholding the usage and customs of *this* family. The partition alluded to in favor of Jugdespoor and Buxar, is also negatived with the statement that they had respectively jagheers for maintenance, while their other extensive possessions are acquisitions forming no part or parcel of the raj. The defendant urges that, if the raj was ever open to such a distribution, a division would naturally have occurred (on the death of Maharaja Vikrmajeet Singh, without issue) between the three sons of Baboo Dasht Dowun Singh, the brother of the said Vikrmajeet, viz. Maharaja Jye Perakash Singh and the Baboos Sheo Perakash and Hur Perakash, and that the raj would not, as it has been shown, have fallen to one, viz. Raja Jye Perakash Singh. Construction No. 1007, &c. &c., are quoted as respective of such usage. The defendant further refers to the baznameh executed by common consent, and to the enjoyment of a maintenance by plaintiff in accordance with it, as a mutual recognition of his right and title, and to Construction No. 942, as fatal to such a subsequent claim. The defendant denying the adoption urges that the ibrainameh, or deed of relinquishment, and the ikrarnameh, or deed of acknowledgment, establish his right as well as that of his predecessor, inasmuch as the raj is indisputably an indivisible property. Defendant alleges that the execution of any deed in his favor on the part of Raja Jankee Pershad would have been an act of supererogation, since his right to the raj was evident, as uncle of the deceased. The repudiation by plaintiff of his signature to the wurasutnamah is met by the fact of a similar undisputed petition from Sheo Perakash Sing, and the signatures of other individuals and the ranees who were also witnesses to the deed.

The defendant finally cites the case of Musst., Koolsum Khanum *versus* Firman Ally as one in point. The parties there having once attested a "bye mokassa" found it fatal to advance a claim to the property mentioned therein.

The other defendants plead and prove independant* proprietary right.

Such then is a brief outline of the pleadings; and the points therefore which I propose for consideration as being clearly those on which the case turns, are the following.

First. Is the raj susceptible of division in consequence of the late Raja (H.) having died both childless and intestate, or will family usage continue the succession *entire* to the next nearest heir ?

Secondly. If it is divisible, to what share is the plaintiff entitled ? if it is *not*, who is the next nearest heir, and is there any legal impediment to *his* succeeding to the raj ?

Thirdly. Is the land now held by Seetul Pershad and other defendants their own *bóna fide* property, or does it belong to the estate of the late Raja (H. ?)

The parol evidence adduced by the plaintiff goes to show that G. who is the second son of A. was adopted by B. on the 20th Bysack 1214 (12th May 1807,) he (G.) being three years of age at the time, and B., the adoptive father, having no child of his own at that period.

That certain ceremonies were performed on the occasion, and the consent of the necessary parties obtained thereto in the presence of a large concourse of people.

That the tonsure and marriage of G. were both performed in the family of his adoptive father, with whom he continued to reside subsequent to the birth of E. (*own* son of B.) which happened some six or seven years after the adoption.

That A. B. and C. were living together at the time ; A. being forty and B. thirty or thirty-five years of age, the latter bringing up and supporting his adopted son entirely.

That H., the late Raja, died childless somewhere near Midnapoor in 1843, on his return from Juggernath, and that B. died at Benares early in 1847.

That a short time after the death of H., D. demanded his share of the estate from G. (who had intermediately usurped the property,) and was promised his proper share on the termination of a suit then pending in the civil court, being a claim set up by E. *versus* G. for the whole of the raj.

That D. disclaimed having signed any wurasutnamah ; that the widow of H. was ill at the time the wurasutnamah was written, and that D. was not present when G. was inaugurated as Raja.

Such I conceive to be a short abstract of the leading features in the plaintiff's parol evidence.

Certain written questions were also sent to the most influential Rajas, &c., in the neighbourhood ; and their answers are filed, disclaiming all knowledge of the division of Jugdespoor, Buxar, and Doomraon, as well as all knowledge of the asserted adoption of G.

We come now to the documentary evidence filed by the plaintiff.

The two deeds on which he chiefly relies to support the plea of adoption are those dated 20th Kartick 1244, corresponding with the 13th November 1836,—the first being grant-

ed by A. the then raja, allotting certain lands for the maintenance and support of G. E. and D., G. being designated in that document as the *adopted* son of B. The signatures of A. B. and C. are upon this instrument, witnessed by several individuals.

The other is a deed of the same date, wherein distinct mention is made of G. being the *adopted* son of B., and in alluding to E. he is contradistinguished as the "son of the body" of B. The signatures of B. C. D. E. and G. are upon this instrument, similarly witnessed.

Certain extracts from the collector's books are also put in, to show that Nirputpoor, &c., are held "*furzee*," so as to support plaintiff's right to include Sultan Singh and others as defendants.

Extracts moreover from the collector's register are filed to prove that 367 beegahs of land in Buhorumpoor are recorded in the name of Baboo Kowur Singh of Jugdespoor, and 1,933 beegahs of the same in the name of A. of Doomraon, and that therefore the raj is divisible.

A genealogical table is likewise furnished by the plaintiff, showing in the reign of what ancestor the houses of Jugdespoor and Buxar branched from their parent Doomraon, and a few sunnuds to guide us in the determination of the years when these alienations took place.

A number of precedents are also put in to prove—

That family usage will not supersede law;

That a son once adopted ceases to inherit in the family of his father;

That a *wurasutnameh* is no proof whatever of *right* to succeed;

That a verbal adoption *even* is valid according to the Shasters;

That an hereditary *zemindarree* may be divided;

That ditto and that an adopted son is excluded from any share of the paternal inheritance, and that the mere act of performing the funeral rights of a deceased Hindoo can give no title of succession without proof of right; and

That the partition of an ancestrel estate may be effected, in opposition to the claim of one heir to hold the same as an indivisible estate.

The evidence for the defence tends to show that H. died childless and intestate, some where near Midnapoor, on his return from Juggernath (whither he had proceeded with his uncle on a pilgrimage) on the 14th May 1843, and that his funeral rites were performed publicly by his uncle G. on the 28th June. That on the following day his (G.'s) inauguration as raja took place in the presence of a vast number of people of high respectability, among whom was D. himself taking an active part in the ceremony.

That on the 6th of July a *wurasutnameh*, or acknowledgment of heirship, was written in favor of G., duly signed by the two dowager ranees of A. and H. (the youngest being quite well at

the time,) by B. and many others, amongst whom by the plaintiff himself.

That G. was never adopted by B., and that the raj of Doomraon is indivisible.

That the tonsure, investiture, and marriage of G. were all performed in the family of his own natural father.

That B. died at Benares in 1847, and was succeeded in his property by his own son E. and not by G.

That G., was born	in 1803
E.,	in 1809
and B.,	in 1787
the latter marrying.....	in 1804

That no deed was written by A. conveying the raj to his grandson (H.), and that B. and C. lived separate from their brother (A.)

Such I believe may be looked upon as a concise abstract of the chief points in the evidence of some 40 odd individuals examined for the defence.

The answers to the written questions sent to the neighbouring rajas affirm the raj of Doomraon to be indivisible.

The documentary evidence put in by the defendant is as follows:—

A genealogical table tracing back the family to the time of Vikramajeet, a period of about 1,900 years ago.

A *wurasutnameh*, or acknowledgment of heirship, dated the 6th July 1843 in favor of G., duly attested by the *cazee* of Bhojepoor, and signed by the two dowager ranees, by B., and by the plaintiff himself with a number of witnesses.

N. B. This document was first filed in the judge's court five days afterwards, or on the 11th of the same month.

Two petitions from the two ranees dated the 11th July, intimating the death of H., the succession of G., and their own attestation of the deed in favor of G.

A proclamation dated the 22d July 1843, inviting objections to the claim advanced to the raj, the plaintiff remaining silent throughout.

A petition from B., dated the 11th July 1843, (in refutation of his son) E.'s statements, viz. that he (B.) had abandoned the world and had adopted G., denying the adoption, and stating that the expression used in the deeds of November 1836 was purely one of endearment, and acknowledging G. to be the rightful heir to the raj.

A *roobakaree* of the judge dated 28th June 1843, summarily rejecting the claim of E., who sought under Act XIX. of 1841, to establish a better right to the raj than G.

A deed written by A. dated the 19th August 1838, and registered two days afterwards, setting forth that he was old and meditating a pilgrimage; and that having every confidence in *his*

son (G.) he appoints him mokhtar over all his property and the guardian of his grandson H., until H. should attain his majority.

N. B. Here G. is distinctly designated by his father A. as *son*, and not a word about adoption.

Two decisions of the Sudder Dewanny Adawlut, dated the 27th February 1846, in the great Durbungha case, cited as precedents for family usage.

Decisions of the Sudder Dewanny Adawlut and other courts, to prove that a "wurasutnameh," &c., being once verified by signature, no further claim can lie; but that it is good in law and equity, and cannot be disputed afterwards.

A proclamation from the collectorate dated 12th of August 1843, inviting objections to the mutations of names of A. and H. in favor of G., the plaintiff on this occasion also preserving silence throughout.

A *baznameh* of E. dated 15th January 1844, praying that his case might be struck off, being a claim set up by him to the whole of the *raj*.

A letter from the collector of Shahabad to the commissioner of the division reporting on the minor H., under the guardianship of G., dated 2d of May 1839, in which no mention whatever of adoption is made.

Reply of B. to a case then pending in court, B. *versus* E., dated 7th August 1841, in which no mention of adoption is made; but on the contrary the appellation of *nephew* is distinctly given by the asserted adoptive father to G.

N. B. At this time there was no case in court regarding the question of succession.

Roobakarrees of officers in the revenue survey, dated May and June 1844, regarding the boundaries of villages belonging to D. and G.

N. B. No plea of adoption was asserted then.

Petition of D. dated 8th December 1841, praying to be entered as proprietor of those lands which he acquired in gift from A. in lieu of maintenance.

N. B. No mention of adoption then.

Petition of D. dated the 2d February 1845, through his mokhtar, Khadim Ally, praying that the defendant's name might be entered as *raja* in the book of mutations, and his own name as proprietor of Doomree, &c.

N. B. This mokhtar, Khadim Ally, is now the plaintiff's leading counsel.

Decisions of the Sudder Dewanny Adawlut, dated 9th November 1816 and 26th May 1803, ruling that family usage forbade the division of Jugdespoor, formerly a component part of Doomraon; that nearest heir succeeds, and adoption not proved, &c.

A sunnud dated 9th of October 1844, granted by the Governor General to G. on his accession to the raj.

Decision of the Sudder Dewanny Adawlut, dated 28th November 1843, recognizing G. as heir to H., with a view of carrying on certain cases then pending in court.

"Junnumputtur" of G., showing him to have been born on Monday the 18th Assin 1860 Sumbut, or September 1803. Ditto of B. setting forth his birth in 1787 A. D., and of E. in 1809 A. D.

Deeds dated 27th October 1836, to show that the mere incidental mention of a particular word is not fatal to such deed; as in this instance the plaintiff's own father designates his brother (A.) as the *son* of Vikrmajeet, when he is in reality the son of Dasht Dowun Singh.

Decision of the Sudder Dewanny Adawlut, dated 4th of August 1812, ruling that the evidence of witnesses to the fact of an adoption being contradictory, &c. &c. &c., the presumption will be that the claim is unfounded.

A deed of acquittance written by B. in favor of G., dated 20th August 1838, saying "I have received 95,000 rupees which were in deposit with you; neither I, nor *my heirs*, will have any further claim against you."

N. B. Put in to prove that no adoption could have taken place, as there is no allusion whatever to such; and that this is not the language which would be used by an adoptive father to his adopted son. This deed, moreover, is witnessed by plaintiff himself.

A deed of conditional sale and receipt, dated 9th August 1831, wherein G. is distinctly designated as the *son* of A., which if he had been adopted by B. would not have been the case.

A petition from the Jugdespoor Baboo, Kowur Singh, dated 11th March 1845, to prove that adoption is not prevalent in the family.

An "ikrarnamah" of G., dated the 13th November 1836, to show that on the very same date on which G. is designated in the other deeds as the adopted son of B., this deed sets him forth as the son of A., without any allusion whatever to adoption.

These, with one or two others of lesser moment, constituted the documentary evidence put in for the defence.

I come now to the consideration of the first point which I proposed for enquiry, viz. "Is the raj susceptible of division in consequence of the late raja (H.) having died both childless and intestate, or will family usage continue the succession *entire* to the next nearest heir?"

From the papers in this case, we gather that Jugdespoor, Buxar, and Doomraon originally constituted one property; and from certain sunnuds and the genealogical table put in by the plaintiff, it would appear that Jugdespoor branched off from Doomraon about 193 years ago, and that Buxar also became a separate estate from about 136 to 141 years ago.

Under what circumstances these alienations took place does not clearly appear in proof; and the question, indeed, at issue is not so much what *originally* constituted the Doomraon property, as whether, since these separations, Doomraon itself has continued indivisibly inheritable for such a length of time as to give family usage on this point the prescriptive force of law.

Now, I certainly think, that by the plaintiff's own showing the custom of nearly a century and a half, coupled with the many successions which have occurred within that period, is a very fair guide to the establishment of family usage; and there can be no doubt whatever that Doomraon has, for this period *at least*, descended entire to one individual; but lest this should be deemed insufficient, we have a decision of the Sudder Dewanny Adawlut on record, dated 9th November 1816, ruling that family usage forbade the division of Jugdespoor even. If, therefore, the branch is unsusceptible of division, *a fortiori* must the parent estate be.

But argues the plaintiff, I have proved that the raj is divisible, because I have shown that 367 beghas of land in Buhorumpoor are recorded in the name of Kowur Singh, the Jugdespoor Baboo, and 1,933 beghas in that of the Doomraon proprietor. To this argument I have only to oppose the fact that Doomraon pays in a revenue to Government of about two lacs of rupees per annum!! Nor can I look upon the unexplained circumstance of a mere atom of land being thus recorded as any proof whatever that the *raj* is divisible. The argument really is too puerile to require further comment.

But continues the plaintiff, "the late raja died childless and intestate, I therefore claim the enforcement of the provisions of Regulation XI. of 1793."

There can be no doubt whatever that the late raja died as stated, but the plaintiff is apparently forgetful of a later enactment; for what says Regulation X. of 1800? It runs thus:—

"By Regulation XI. of 1793, the estates of proprietors of land, dying intestate, are declared liable to be divided among the heirs of the deceased, agreeably to the Hindu or Mahomedan laws. A custom however having been found to prevail in the Jungle Mehals of Midnapoor *and other districts*, by which the succession to landed estates invariably devolves to a single heir without the division of the property, and this custom having been long established," &c. &c., it is therefore enacted as follows:—

"Section II. Regulation XI. of 1793 shall not be considered to supersede or affect any established usage which may have obtained in the Jungle Mehals of Midnapoor *and other districts*, by which the succession to landed estates, the proprietor of which may die intestate, has hitherto been considered to devolve to a single heir, to the exclusion of the other heirs of the deceased," &c. &c.

Here then we have the Regulations of Government distinctly providing for a case like the present.

Again, in Macnaghten's *Sudder Reports*, Vol. III. page 41, is a note as follows :—

“This custom, by which the succession to landed estates invariably devolves on a single heir, without a division of the property, has been recognized and declared legal by Regulation X. of 1800. A formal enactment was not perhaps necessary as far as the Hindu law is concerned; that law itself providing for exceptions to its general rules, and declaring that particular customs shall supersede general laws. ‘A decision must not be made solely by having recourse to the letter of written codes; since if no decision were made according to the reason of the law, (or according to immemorial usage, for the word *yucti* admits both senses,) there might be a failure of justice.’—Colebrooke's *Digest of Hindu Law*, Vol. II. page 228.”

I think, therefore, we may dismiss the first point very safely by declaring that the raj of Doomraon is not susceptible of division; but that family usage, recognized and supported as it is by our own Regulations as well as by the Hindu law, will preserve the succession *entire* to the next nearest heir.

This brings us then to the discussion of the latter part of the second query, viz. who is the next nearest heir, and is there any legal impediment to his succeeding to the raj?

Now a mere glance at the sketch of the family which I have given in an early part of this narrative, will show at once that the defendant G., who is the uncle of the late raja, is unquestionably the next nearest heir, and that the succession must devolve entire to him, unless there be some disqualifying cause. This of course will render it necessary to discuss, in all its bearings, the plea of the adoption of G. into the family of B.

The two documents on which the plaintiff chiefly relies to establish this point are those dated the 20th Kartik 1244, or 13th November 1836, in which G. is distinctly designated as the adopted son of B. The originals of these documents have not been produced; but I have no reason to infer that the copies are any thing but what they purport to be. These copies were originally made and delivered on the 19th December 1836, by order of a former judge dated the 29th November preceding.

The production of these deeds at that time was entirely a spontaneous act on the part of the parties concerned, for there was no case in court at that period requiring them; and had there been no *other* object in view than to perpetuate their genuineness, one would think that the register of deeds would have been the correct officer before whom they should have been brought and registered. Be that as it may, however, the defendant does not dispute the

correctness of the copies ; and I only mention the above lest it should be thought that it had escaped my notice.

Here then are the documents in which distinct mention is made of G. being the adopted son of B. ; but as these *alone* are totally insufficient to establish an adoption, although they may be looked upon as excellent circumstantial evidence, we must proceed to the direct proof on this point presumed to be furnished in the testimony of about 20,000 individuals ; and here I must say that it is impossible to rise from the perusal of this evidence, without a painful conviction that the whole is *tutored* and utterly worthless.

The plaint is altogether silent as to the how, where, and when this adoption took place ; but this deficiency is supplied by the witnesses with such an air of freshness and minuteness of detail as to lead one to imagine that they are deposing to an occurrence of yesterday, instead of to one of 40 years standing!! They are generally speaking individuals residing on the plaintiff's property : the causes assigned for their presence at the different ceremonies and occasions are frivolous to a degree. They depose, to a nicety, forsooth, from the training they have undergone, to the points on which it was pre-determined they should be examined, even though those queries have reference to circumstances of 40 years standing ; but when they are asked to depose to matters of more recent occurrence, materially affecting the issue of the case and operating as a test of their veracity and strength of memory, they are entirely ignorant of dates, circumstances, &c. &c. Nor does it appear how it was ascertained by the plaintiff that individuals residing away from the spot where the asserted adoption took place, happened to be present at these particular ceremonies, &c., some 40 years ago!!!

The inference is that the surrounding villages were ransacked for recruits ; for witnesses in short, whose age and indifference to the obligations of an oath rendered eligible for enlistment in the plaintiff's cause ; and I will further add that if evidence such as this is to be deemed sufficiently conclusive to establish an adoption, there is not a raja on his throne at the present instant who may not with equal facility be displaced, and the whole aristocracy of India be annihilated in time.

I conceive it highly improbable, moreover, that A., who had only two sons, should have thought for a moment of parting with one ; knowing, as every well educated Hindu must have known, that a son once adopted ceases to inherit in the family of his natural father ; and that if death deprived him of his eldest boy, the raj would pass into other hands. The only text, however, which I find bearing on this subject is the following :—

“According to the general prohibitory rule, ‘by him who has one son only, the gift of that son is not legal,’ Cuvaira Bhatta

says : The gift of a son by a man who has two sons, *must not be made* ; for he, having quoted the text of Saunaca, ('By a man having several sons, the gift of a son is to be made, on account of difficulty,') observes, that on the death of the other son, the lineage would be extinct." Vide Note † at page 178, Vol. II. of Maenaghten's Hindu Law.

This, though I am inclined to believe, is looked upon as more dissuasive than peremptory.

Why however should B. (who by his horoscope could only have been twenty years of age at the time of the asserted adoption) have so far abandoned all hope of progeny himself as to contemplate at that early age the assumption of the character of *adoptive* father? I candidly confess that I can find no motive whatever either for A. to give, or for B. to receive a son in adoption at that period ; but, on the contrary, I can see very cogent reasons why neither should do either one or the other.

It is worthy of remark too, that the first we hear of this asserted adoption is ~~that~~ conveyed in the documents of November 1836, a period of nearly thirty years after the occurrence is supposed to have taken place. Now surely, if it was a matter of such notoriety as the plaintiff's witnesses would wish us to believe, how comes it that none of the influential rajas in the neighbourhood should have heard aught about it?

Great stress was laid by the plaintiff's vakeel on a certain roo-bakarree, dated the 19th January 1842, in a case then pending in the principal sudder ameen's court, B. *versus* E., wherein allusion is made to the deeds of the 13th November 1836, reciting G. as the adopted son of B. ; urging that as none of the parties who *now* dispute the adoption ever did so then, they are therefore debarred at the present moment from so doing. But it is to be observed that the party who now disputes the adoption was in no way concerned in the case *then sub lite* ; hence this, as a proof of his tacit consent to the plea of adoption, is totally irrelevant.

A reference will now be made to some of the principal documents filed by the defendant, which will throw still further light upon this case ; and first, with regard to the petition of B. dated the 11th of July 1843, wherein, he distinctly denies having adopted G. according to the Shasters, but expressly states that the expression used by him, was purely one of endearment. Here then is a key to the solution of the origin and progress of this case ; a fortuitous expression of tenderness is cleverly metamorphosed into good circumstantial evidence of adoption, which is eventually bolstered up by the tutored testimony of a score of worthless witnesses.

There are also several documents to prove that both before and after the deeds of 1836, G. is designated as the *son* of A. ; one particu-

larly of the very same date as those on which the plaintiff chiefly relies, and which was produced with the others before the judge on the 29th November 1836, and no mention whatever of adoption is to be found herein.

The petition of the plaintiff, dated the 2d of February 1845, filed in the collector's office by Khadim Ally, his mookhtar, praying that *the defendant's name might be registered as raja* in the book of mutations and himself as proprietor only of Doomree, &c., is to me a most convincing proof that at that time the *idea* even of a *bond fide* adoption had never entered the plaintiff's mind. This very Khadim Ally being the plaintiff's most strenuous advocate on the present occasion !!

Again, we find the plaintiff taking a conspicuous part in the inauguration of defendant as raja on the 29th June 1843, and publicly affixing his signature to the "wurasutnameh" on the 6th of July following, in open and unreserved acknowledgment of the defendant's rightful succession to the raj. Are these, I would ask, the acts of a person who entertained the remotest suspicion even that the birthright of defendant had been forfeited by adoption ?

With all this mass of evidence therefore before me, and with all the fair inferences deducible therefrom, I cannot but come to the conclusion that no adoption has been proved to the satisfaction of the court, and that the plaintiff is not entitled to any share in this estate, but that, on the contrary, it must devolve *entire* to the defendant (G.) as the next nearest heir—there being no legal impediment whatever to his succeeding thereto, and enjoying both the raj title and the raj domain of Doomraon.

With the above view of the case, the third point which was reversed for consideration need not be entered upon, as it falls of necessity to the ground. It only remains therefore to record that the plaintiff's suit is dismissed with all costs chargeable to him.

P. S. The names of the parties concerned in this suit are so perplexingly alike, that I was obliged to *alphabetize* the leading characters to render the case at all intelligible. It being one also of vast importance, and from its amount (nearly 38½ lacks of rupees) eventually appealable to the Queen in Council, I have (taking as my guide a recent decision of one of the Sudder Judges) "deemed it advisable to record *at length* the grounds on which my judgment rests."

ZILLAH SYLHET.

PRESENT : II. STAINFORTH, Esq., JUDGE.

THE 14TH APRIL 1848.

No. 141 of 1847.

Appeal from the decree of Baboo Hergouree Bose, Moonsiff of Russoolgunge, dated 26th June 1847.

Kumul Narain Rai, Appellant,

versus

Sheik Bukhshee Mundul, Respondent.

RESPONDENT sued, on the 13th of August 1846, to effect reversal of a summary decree, dated 17th June of the same year, in a suit, of the institution of which he alleges to have been uninformed, and for recovery, with interest, of the sum of 16 rupees, 1 anna, 6 pie, the amount which he had lodged in the collector's court in pursuance of the said decree, under which he was adjudged liable to pay rent of 1 koolba 10 kears of land, for the year 1252 B. S., in mouzah Pooran Kala Rooka, the property of appellant, under a kubooleut, which was, he alleged, to have been executed, but which was never executed by him, he having never tenanted land saving in mouzah Pooran Kala Rooka, in talooka chuk Ramkishunpoor, the estate of Mooraree Chunder Rai.

Appellant alleged, in his answer, that respondent, on the 22d Phalgun 1249 B. S., executed a kubooleut, or agreement, to pay 11 rupees rent of 1 koolba, 10 kears of *ealam* land in mouzah Pooran Kala Rooka, originally settled with his (appellant's) father and uncle; that respondent paid rent for 1250 and 1251 B. S., and that, as it was withheld for the year 1252, it had been realized under the summary decree.

The moonsiff, Baboo Hergouree Bose, decreed the claim, which he held proved by respondent's witnesses, setting aside the evidence adduced by appellant, because of discrepancies in it, because there was no mention of the kubooleut in the plaint filed in the summary suit, and on other grounds.

Appellant now urges, in general terms, that his defence is proved, and ought not to have been rejected on trivial grounds, but tested by local investigation, if the evidence adduced by him was not deemed sufficient.

JUDGMENT.

Appellant realized rent, under an *ex parte* summary decree given in accordance with a kubooleut, or agreement, to pay it, and affirmation of the decree must apparently rest on proof of the execution of the kubooleut by respondent. I am not satisfied that he ever executed it; there is no mention, in the plaint filed in the summary suit, of the existence of such a document, though it was subsequently brought forward; but, had it been a true document, it would, in my opinion, have been prominently noticed in the plaint; moreover there are discrepancies in the evidence, noticed by the moonsiff, and this important difference, that, while appellant stated to the deputy collector (proceedings of the 17th June) that he was in Assam, when the kubooleut was executed, and that it was given to his mohurrer, one of his two witnesses before the deputy collector stated it to have been executed in his presence. Under these circumstances, I concur with the moonsiff in deeming the kubooleut unworthy of reliance, and in disbelieving appellant's statement.

IT IS THEREFORE ORDERED,

That the appeal be dismissed, and the decree of the moonsiff affirmed with costs.

THE 18TH APRIL 1848.

No. 220 of 1847.

Appeal from the decision of Moonshee Chytnchurrun Das, Moonsiff of Lushkerpore, dated 14th September 1847.

Ramchurrun Surmah, Appellant,

versus

Doorgachurrun Surmah and others, Respondents.

RESPONDENTS sued for 9 rupees, 15 annas, 6 pie, their share of the costs of an appeal, with interest, stating that appellant, Door-gachurrun, (respondent,) and the late Rani Lochun Surmah, husband of Surbomungla, (own brothers,) living *humtaam*, sued for some land, and obtained a decree for part of it without costs; that, therefore, in Assar 1249 B. S., an appeal was preferred, at the cost of the three brothers, in the name of appellant; that respondents joined in advancing the expense of the usual processes; that, in Bhadoon 1249, appellant separated from them, and a decree was given for costs, in the following Agraahun: that the matter was adjusted between the decreeholders, and those

against whom the decree was passed, and the costs of the moonsiff's court and those of the court of appeal were stated to be 16 rupees 4 annas, and of this respondents realized 10 rupees, 13 annas, 4 pie, *i. e.*, two-thirds of the whole ; but that, after this appellant took out execution of the decree in his name, and, in spite of respondents' objections, obtained a summary order that he alone should realize the costs—this suit is thus brought to set aside this order, and to enforce respondents' right to the share of the costs realized by appellant.

Appellant resisted the claim, alleging that the costs were allowed at his sole charge ; and that he separated from his brothers in Bhadoon 1249, because they would not contribute their share.

The respondents, in reply, stated that all their property was in family partnership, and that none had been acquired by appellant alone.

The moonsiff, Baboo Chytunchurrun Das, decreed the claim with a deduction of interest on 2 rupees, because in the appeal cases it was ordered that the costs should be paid to appellant *and the rest* ; because the brothers were *huntaam*, having equal interest in the property decreed ; and because it was proved, by the evidence taken before moonsiff, and by the ameen, that all joined in advancing the costs of appeal, while appellant had not produced proof that he alone defrayed them.

Appellant now re-urges his former pleas, alleging that he raised the money for the costs by begging, and that the evidence of respondents' witnesses, as to respondents having advanced part of the costs of appeal, is hearsay, while Kishenchunder Bhutacharge, one of their witnesses, has deposed to respondents having advanced no part of the costs of appeal ; and that, being ill, he was not aware that he was required to furnish proof of his defence ; and therefore could not produce it ; but that, as the papers shewed that the costs were defrayed by him, the case did not depend on evidence to be adduced by him.

JUDGMENT.

The order in the decree, in the case of appeal, is inconclusive, admitting of two constructions, but I think it proved that the parties joined in advancing the costs of the appeal, a fact rendered probable by the circumstances that the brothers were at the time living *huntaam*, in family partnership. Appellant's plea of illness is inadmissible, and his assertion, that Kishenchunder, respondents' witness, had denied that respondents contributed to the costs of appeal, is incorrect.

IT IS THEREFORE ORDERED,

That the appeal be dismissed, and the decree of the moonsiff affirmed with costs.

THE 19TH APRIL 1848.

No. 235 of 1847.

*Appeal from the decision of Baboo Chytunchurrun Das, Moonsiff
of Lushkerpore, dated 13th November 1847.*

Gyan Das Bishnoo, Appellant,

versus

Ruttun Bishnoo and Bishunpershad Bishnoo, Respondents.

APPELLANT sued for 32 rupees, damages in consequence of having been foully abused and assaulted by respondents.

Respondents denied the assault and abuse declared by appellant, countercharging him with abusing them.

The moonsiff, Baboo Chytunchurrun Das, held the charge advanced by appellant not proved, and dismissed his claim.

Appellant now urges that he was about to take measures for the adduction of his unexamined witnesses, when, yielding to the solicitation of respondents and others, he agreed to compromise the matter for 8 rupees, which sum was paid to him; that he was about to file a razeenameli, but that the moonsiff dismissed the suit only four days after the court had been re-opened, on expiration of the Dusserah vacation; and that had his claim been untrue, the sum quoted would not have been paid to him, and he prays that further evidence be taken, and the balance of his claim decreed with costs.

JUDGMENT.

I find that on the 24th of August last, the moonsiff required appellant to adopt measures for the attendance of his witnesses, and that two witnesses were examined on that date, and two more on the 1st of September following, after which no steps were taken by appellant till the case was brought to a hearing on the 13th of November (that is to say, after lapse of six weeks without appellant having proceeded on it), and dismissed; under such circumstances, were the case remanded, it could only be so treated in order to be dismissed on default, but appellant admits having received 8 rupees in satisfaction of his claim; and this being the case, I see no reason to exercise any interference in the decision of the moonsiff.

IT IS THEREFORE ORDERED,

That the appeal be dismissed, and the decree of the moonsiff be affirmed with costs.

THE 20TH APRIL 1848.

No. 11 of 1847.

*Appeal from the decision of Baboo Hergouree Bose, Moonsiff of
Russoolgunge, dated 5th December 1846.*

Bishun Maya Dibia and others, Appellants,

versus

Byjnath Surmah and others, Respondents.

APPELLANTS and Shanund Ram Surmah sued for 4 jet, 2 reg of land, with mesne profits, stating that there is 2 pao, 3 jet, 2 reg of land, including a tank, on the eastern side of their dwelling house, in talooka Unund Oodee, No. 141, their hereditary property; and that respondents encroached on the northern boundary of it on the 1st of Chyt 1242, dispossessing them of 4 jet, further dispossessing them of 2 reg on the 16th Poos 1251, under cover of an order according to Act IV. of 1840, by cutting a ditch; and they added that Shanund Ram had disposed of his share to Rajkishun, Joogulkishun, and Bhowanee Pershad, appellants.

Byjnath Surmah, Gopalkishun Surmah, and Narain Surmah denied the encroachment, and asserted the land in suit to be in talooka Gunesh Hoolas No. 127, their property and possession, in which they were confirmed by the decision under Act IV. of 1840.

Appellants urged in reply, that, by the halabadce measurement, which took place in 1234 B. S., the land in suit was measured as appertaining to their homestead under plot No. 2,525.

Respondents rejoined, alleging contrarily that it was measured in connection with *their* homestead under plot No. 2,527.

The moonsiff, Baboo Hergouree Bose, rejected the evidence of appellants' witnesses, in consequence of discrepancies. He found it proved, by evidence on the part of respondents, by local investigation through an ameen deputed by him, as well as by the evidence on record in the suit under Act IV. of 1840, that the land in suit was in respondents' possession. He himself visited the place, and measured plots 2,525 and 2,527, as pointed out to him by Shanund Ram, in the presence of the respondents, who defended the suit, and made a map of the ground, when respondents urged that the measurement was unfairly made, the length being made the breadth, and *vice versa*, as would be clear were the ground, on which appellants' house stood, measured, but Shanund Ram was unable to state under what plot the ground of his house had been measured (in 1234), an inability which the moonsiff attributed to consciousness that the land would only be shewn, by the measurement prayed by the respondents, to belong to the latter: and on these, and other grounds, he dismissed the suit with costs.

Appellants now urge that their claim is proved by the evidence of their witnesses in which there is no discrepancy; that the ameen, deputed by the moonsiff, acted with partiality, taking the evidence of persons who were indebted to, and were under the influence of respondents, and at enmity with appellants; that there is a path between the land in suit and the ground of appellants' homestead, which was measured (in 1234, in a separate plot, and that it was therefore impossible that *they* should have annexed any part of the land of the plot, of which the land in suit forms a part, to the plot on which their house stands; and that, if the two plots of respondents' land were measured, the land in suit would be shewn to be in excess of the quantity belonging to them.

JUDGMENT.

The two plots, Nos. 2,525 and 2,527, to which the land in suit is declared by the parties respectively to belong, were both measured by the moonsiff, *as pointed out by Shanund Ram*, co-plaintiff with appellants, and the moonsiff found appellants' plot, No. 2,525, to measure, with inclusion of the land in suit one way, *i. e.* north and south 5 kahwuns, and $3\frac{1}{2}$ kahwuns the other, which dimensions agree with those in the roll of the measurement of 1234 B. S. filed by appellants; while, on the other hand, he found respondents' plot, No. 2,527, to measure 5 kahwuns, 1 pun by 5 kahwuns, shewing agreement with the measurement of 1234 in an easterly and westerly direction, and loss of 15 puns on the northern and southern direction, *i. e.* the direction in which the encroachment is alleged by appellants to have been made. Thus, if the land in suit be excluded from the measurement, north and south, of each plot, both parties appear to have less than the land roll indicates them entitled to, and the land roll is therefore of no avail as evidence in the matter, and I must look to the evidence. The witnesses of each party have generally sworn for the party in behalf of which they were called; but I observe that one of them, Motee Ram, who, though produced by respondents, was named by both sides, has deposed in favor of respondents; and I further notice that respondents' witnesses, taken before the moonsiff, live in the same place with the parties, while those of appellants live at some distance and are not likely to know which of the contending parties is owner of the very small portion of land under litigation; and the evidence under such circumstances appears to me to preponderate in favor of respondents; at all events appellants, who were bound to prove their case, have not done so to my satisfaction, and measurement of plots other than Nos. 2,525 and 2,527, which have been measured, would obviously have no effect in their favor.

IT IS THEREFORE ORDERED,

That the decree of the moonsiff be affirmed, and the appeal dismissed with costs.

THE 20TH APRIL 1848.

No. 204 of 1847.

Appeal from the decision of Moonshee Chytunchurrun Das, Moonsiff of Lushkerpore, dated 8th September 1848.

Izzut Shah Faqueer, Appellant,

versus

Sheik Dagoo, Respondent.

APPELLANT sued for 32 rupees, damages, stating that, on the 15th of Poos 1253 B. S., respondent abused his son, Moojeed-oollah, and that he went to enquire about it at a feast in the house of Mahomed Azeem, when respondent struck him with a shoe on the head, abused him, and was about to strike him again, when Nuseemoollah intervened, and prevented him from doing so.

Respondent resisted the claim, and alleged that he and others told appellant's son to go and call others to the feast, when he refused and went home, and afterwards appellant came and abused respondent, and ran at him for the purpose of beating him; that he (respondent) was actuated with the same desire, but was prevented by persons who interposed: he adds that appellant lives by begging, and has sued for damages, which are disproportioned to his circumstances; and that the witnesses who have given evidence are connected with him or under his influence.

Appellant, in reply, urges that his claim is made out; that Ramchurrun Rai and Gourkishwur Rai investigated the matter, and ascertained that respondent had struck him with a shoe; and that respondent deposited six rupees with Ram Narain Shah, in order to compromise the matter, but that he (appellant) had not accepted it, and that, in consequence, respondent had vindictively caused his brother, Manollah, to sue appellant's son and others for damages: and he prayed that the zemindars, &c., above named should be sent for and examined.

The moonsiff, Baboo Chytunchurrun Das, dismissed the suit on account of discrepancies in the evidence of appellant's witnesses, while from the evidence of two witnesses named by the parties, and two cited by respondent, it was clear that the parties had quarrelled and abused each other, but that the blow with a shoe was not proved, noticing that appellant had not taken measures for the adduction of the other witnesses.

Appellant now urges that respondent offered him 15 rupees, which was refused; and that, in consequence, after long lapse of time, he gained over two of his (appellant's) witnesses, and filed an answer in the case, adducing the evidence of these faithless witnesses and two others equally false.

JUDGMENT.

The four witnesses adduced by appellants swear to the assault, and two witnesses named by the parties, and two witnesses named by respondent, speak to the occurrence of abuse on both sides, but do not speak to the assault, still I observe that the proclamation for the appearance of respondent expired on the 12th of March 1847, and that his answer was admitted on the 20th April following, on the plea that he had been absent trading, but no enquiry was made into the truth of this plea, which is contradicted by appellant, who affirms that the answer was only filed because he (appellant) would not accept the offer made to him, the witnesses being gained over. Under these circumstances it seems to me doubtful whether justice has been done in the case, and it may admit of elucidation if the evidence of Gourkishwur Rai, Ramchurrun Rai, and Ramnarain Shah, and such other persons, as their testimony may shew to be cognizant of the facts of the case, be taken.

IT IS THEREFORE ORDERED,

That the decree of the moonsiff be reversed, and that the case be remanded for further investigation as designated above. The price of stamp of the petition of appeal will be returned, and a proper order for the costs of this appeal will be passed by the moonsiff, who, in the event of his decreeing in favor of appellant, and the damages awarded not exceeding 15 rupees, should consider whether he is entitled to costs, after having, as he states in appeal, rejected the sum of 15 rupees, offered to induce him to forego his suit.

THE 22D APRIL 1848.

No. 14 of 1847.

Appeal from the decision of Rai Radhagobind Shome, late Principal Sudder Ameen of Sylhet, dated 21st June 1847.

Manickchunder Deb, Appellant,

versus

Dowlut Mahomed and others, Respondents.

RESPONDENTS sued for possession, with mesne profits, of 8 koolbas, 9 kear, 1 pao, 3 jet of land, *i. e.* for $\frac{2}{16}$ ths of 3 mouzahs in talooka Priag, No. 4 of pergunnah Dohalea.

Appellants resisted the claim, pleading the law of limitation in bar of it, with other pleas.

The late principal sudder ameen, Rai Radhagobind Shome, overruled all the pleas, and decreed the claim in respondents' favor.

The parties have now filed a deed of amicable adjustment of the dispute, under which they are to enjoy each half of the land in suit,

respondents being at liberty to take out execution in case their half be not relinquished by appellant; and their costs in the court of first instance and in this court are to be charged to the parties respectively; and no further claim is to be made for mesne profits, of which respondents acknowledge to have received 90 rupees from Deepchund, one of the persons sued.

IT IS THEREFORE ORDERED,

That the decree of the principal sudder ameen be reversed, and that the suit be decided according to the deed of adjustment.

THE 22D APRIL 1848.

No. 160 of 1847.

Appeal from the decision of Baboo Ram Taruk Rai, Moonsiff of Hingajeeah, dated 28th July 1847.

Gopeekant Chuckerbuttee, Appellant,

versus

Gobindram Deb, Respondent.

RESPONDENT sued for 14 rupees, 8 annas, 9 pie, *i. e.* for 8 rupees the value of a bullock, illegally accused to be sold by appellant, under claim of rent when none was due, he not tenanting appellant's land, *plus* an equal sum as penalty, and *minus* 1 rupee, 7 annas, 3 pie, proceeds of the sale delivered to respondent.

Appellant answered alleging that respondent was debtor to the extent of 3 rupees, 6 annas, as rent in 1252 of 4 kear, 2 pao, and in 1253, of 2 kear of burmooter land in the name of Ununt Ram and Radhakant, held by appellant, under a pottah in the names of Haleeshunker Chuckerbuttee and others; that respondent executed a kubooleut, or engagement, for the rent, on the 5th July 1252 B. S. and paid 6 annas rent for 1252, but withheld the balance, 2 rupees, 6 annas, which was realized, with 1 rupee for an instalment on account of 1253, under the provisions of Reg. V. of 1812.

The moonsiff, Baboo Ram Taruck Rai, held it proved by respondent's witnesses that respondent tenanted no land belonging to appellant; he observed that two of these witnesses had deposed that they themselves and others were tenants of the land of the rent in suit paying rent to Fechoo Thakoor, brother of appellant, and that it was thus clear that the rent had been exacted by appellant though respondent was not tenant of his land; that though appellant had filed a kubooleut, and caused it to be attested by the evidence of two witnesses, the deed itself had the appearance of being a fabrication, the writing on it being in new ink, and the paper old. He further made a local investigation, on which appellant's defence was not substantiated; and on these, and other grounds, he decreed that respondent should receive 13 rupees;

1 anna, 6 pie, *i. e.* the value of the bullock, *minus* the surplus proceeds of the sale paid to respondent, and *plus* an equal sum to the remainder as penalty, with costs and interest.

Appellant now urges that execution of the kubooleut is proved ; that it is not open to suspicion as averred by the moonsiff, who could, had he chosen, have taken the evidence of two unexamined subscribing witnesses to it ; and that, when the moonsiff was making the local investigation, he presented a petition that the evidence of the most respectable persons in the neighbourhood should be taken, on which the moonsiff caused summons to be issued, but decided the case without enforcing their attendance.

JUDGMENT.

The investigation in this case appears to me imperfect. Appellant petitioned, on the 13th of July, that the evidence of several witnesses should be taken. The moonsiff ordered issue of summons for their attendance on the same date, and, on the 24th idem, a return was made shewing that one of the witnesses had acknowledged the summons with his signature, and that five others had refused to sign : and the moonsiff passed an order filing the summons with the record of the suit, which he disposed of on the 28th idem. Appellant appears to me entitled to have opportunity for causing the attendance of these witnesses.

IT IS THEREFORE ORDERED,

That the decree of the moonsiff be reversed, and the suit remanded for further investigation. The price of the stamp of the petition of appeal will be returned, and the rest of the costs provided for in the moonsiff's future decree.

THE 24TH APRIL 1848.

No. 135 of 1847.

Appeal from the decision of Baboo Sharoda Pershad Ghose, Moonsiff of Ajmereegunge, dated 9th June 1847.

Sheik Suddoo, Appellant,

versus

Sheik Durbaree and others, Respondents.

SHEIK Durbaree, Urzan Beebee, and others, sued for 60 rupees, damages, stating that, on the 19th of Sawun 1253, appellant assaulted Urzan Beebee, a connection of the other plaintiffs, and called them all *muchooas*, fishermen ; and that, on the 12th Jyte 1248, Sheik Dagoo, appellant's brother, similarly abused Sheik Durbaree, and that in consequence of the repeated abuse which had been given, they, respondents, had been excommunicated at a feast given at the house of Sheik Anoo.

Appellant denied the foregoing statement, urging that the suit was preferred at the instigation of his enemies ; that the plaint exhibited three grounds of suit, to wit, first, the assault by appellant on Urzan Beebee, secondly, the abuse of respondents by appellant, and thirdly, the abuse by Sheik Dagoo, which could not be incorporated in a single suit; that he was absent at the time of the alleged abuse on the 19th Sawun 1253; and that Urzan Beebee had accused him of having married the daughter of a *muchooa*, and that he was about to sue for damages in consequence, but was forestalled by the present suit.

The moonsiff, Baboo Sharoda Pershad, held the assault and abuse charged in the plaint proved, and decreed that appellant should pay 20 rupees and Dagoo 8 rupees each, with costs in proportion, and interest to the date of realization.

Appellant now urges that as Urzan Beebee did not sue, her heirs are incapable of doing so ; that the suit is founded on two causes ; and that the damages are re-excessive.

JUDGMENT.

I find that Urzan Beebee *did* sue, and am of opinion that, if she was entitled to damages, her right is now vested in her heirs. These damages are claimed in consequence of respondents having been excommunicated from the society of their fellows, on account of abuse applied to them by appellant and his brother. The suit seems to me legal, and the decision of the moonsiff, on the grounds stated in it, consistent with the evidence, and proper.

IT IS THEREFORE ORDERED,

That the appeal be dismissed, and the decree of the moonsiff be affirmed with costs.

THE 29TH APRIL 1848.

No. 176 of 1847.

Appeal from the decision of Baboo Sharoda Pershad, Moonsiff of Ajmereegunge, dated 31st August 1847.

Tarnee Dasee and others, Appellants,

versus

Nukoolchung, Respondent.

RESPONDENT sued for 19 rupees, 9 annas, 3 pie, *i. e.* thrice the sum of rupees 6-8-5, including costs, money exacted from him, under plea of his being defaulting tenant of 10 kear, 2 pao of land, in the shikumee talooka Bhowanee Das, for 1252, B. S. he (respondent) not being tenant of such land, but a tenant of land in talooka Koorban Reza.

Tarnee Dasee, Gya Dasee, and Brijkishwar Das, filed an answer, alleging that respondent was tenant of the land for which the rent for 1252 was realized under Regulation V. 1812, he having previously paid up to 1251 B. S.; that a map, shewing the boundaries of the dependant talooka, was made, bearing the signature of Bhowanee Das and the seal of Koorban Reza, the zemindar, from which the land of the rent in suit will be seen to belong to the dependant talooka; and that part of it was measured by the ameen, who gave (the late Mahomed Idris) possession of talooka Adum Reza, No. 1, and excepted from his land roll, on the petition of Joogul Kishwur, son of Tarnee Dasee, appellant.

Respondent stated, in his reply, that he was formerly a tenant of appellant, and that he quitted their estate on account of oppression.

Bishnath Sein, purchaser of a share of talooka Koorban Reza, filed a petition in support of respondent.

The moonsiff, Baboo Sharoda Pershad, held it proved that respondent tenanted no land belonging to appellant, and he observed that, though appellants' witnesses had sworn to the contrary, still no kubooleut, or engagement, to pay rent had been filed, or its absence accounted for by any of the witnesses; that the copy of the map, dated 11th Phalgun 1218 B. S., obtained from the collector's office, and the land roll, dated 20th Jyete 1248 B. S., did not shew that respondent was tenant of appellants' land: and, on these and other grounds, he decreed for restitution of the sum extorted as rent, *i. e.* 5 rupees, 12 annas, 5 pie, including 2 annas taken as expenses, with costs and interest.

Appellants now urge that their defence is established, and especially that the land of the rent in suit was liberated from the land roll of the measurement of talooka Adum Reza, in plot 627, on the petition of Joogul Kishwur; that the moonsiff should have given weight to this circumstance, and have ascertained whether the land is within the boundaries shewn in the map or not: and he adds that, when Bishnath Sein was given possession of a share of talooka Koorban Reza, he was put in possession of no part of the land of the rent in litigation; and that the evidence of Joogul Ram and Jugurnath, formerly occupant of the homestead mentioned by respondents, shews the homestead to belong to the defendant talooka, with other immaterial matter.

JUDGMENT.

The question is, who received the rent prior to 1252 B. S. The witnesses swear in favor of their respective parties, and the moonsiff should have tested the oral by examination, the documentary by circumstantial evidence. *First*, appellants say that the land of the rent in suit was measured as part of talooka Adum Reza, while in the tenancy of Beena Chung, respondent's predecessor, and ex-

cepted from the land roll of that talooka, on the petition of Joogul Kishwur. *Secondly*, they urge that, when possession was given to Bishnath Sein of the share he had bought in talooka Koorban Reza, he was placed in possession of no part of the land connected with the rent in litigation. *Thirdly*, appellants plead that the land is included in the boundary of talooka Bhowanee Das, exhibited in a map dated so far back as 1218 B. S., which, though not authenticated by the signature of any public officer, is filed in the collector's office, and appears to bear the seal of Koorban Reza, once the owner of the talooka which bears his name. Before coming to any decision, the moonsiff (who, if he were justified in giving a decree in favor of respondent, should have awarded penalty under Section 6, Regulation XVII. 1793,) ought certainly to have examined these documents, and locally investigated the case, which cannot be made to depend wholly on the existence or non-existence of a kubooleut, and the other grounds stated by him.

IT IS THEREFORE ORDERED,

That the decree of the moonsiff be reversed, and the suit remanded for further investigation described above. The price of the stamp of the petition of appeal be returned, and the moonsiff will pass proper orders with regard to the remaining costs of the appeal.

THE 29TH APRIL 1848.

No. 177 of 1847.

Appeal from the decision of Baboo Sharoda Pershad, Moonsiff of Ajmereegunge, dated 31st August 1847.

Tareenee Dasec and others, Appellants,

versus

Deena Chung and others, Respondents.

The circumstances of this case are, *mutatis mutandis*, similar to those described in appeal No. 176, this day decided, and it must be remanded on the grounds detailed in that suit.

IT IS THEREFORE ORDERED,

That the decree of the moonsiff be reversed, and the suit remanded for further investigation. The price of the stamp of the petition of appeal will be returned, and the moonsiff will pass a proper order in regard to the other costs of the appeal.

ZILLAH TIPPERAH.

PRESENT : T. BRUCE, Esq., JUDGE.

THE 5TH APRIL 1848.

No. 16 of 1846.

Regular Appeal from a decision of Moolvy Mahomed Ali, Principal Sudder Ameen, dated 7th July 1846.

Ram Lochun Moojumdar and Kassissur Deb, (Defendants,) Appellants,

versus

Government, (Plaintiff,) Respondent.

SUIT laid at Company's rupees 1,001-7-4.

This suit was instituted on the 13th September 1845, for the enhancement of the rent of a dependant talook.

The Government sue as proprietors by auction purchase of the 2 annas, 13 gundahs, 1 cowree, 1 krant share of pergunnah Bul-dakhal.

The defendants plead that their talook (Doolub Ram Deb) is a *mocurruree* tenure, not liable to enhancement of rent.

The principal sudder ameen gave judgment for the plaintiff declaring the talook liable; but before the amount rent could be fixed, an appeal was preferred from his decision. He stated that, although it was incumbent on the defendants to prove their plea, they had altogether failed in doing so,—the only proof adduced by them being copy of a decision passed by a deputy collector in the year 1837, under the provisions of Regulation IX. of 1825, a description of evidence of no weight in a regular suit; and, *secondly*, that it was proved by the documentary evidence filed by the plaintiff, viz. *jumma wassil bakee* and *tahood mildnee* papers, that the rent had varied during the years immediately antecedent to the decennial settlement; having been rupees 318-9-1 in the year 1195 B. S.—rupees 318-9-10 in 1198 and 1204—and rupees 306-11 in 1207, the year of the settlement.

In both these points the principal sudder ameen is more or less in error: in the former, in respect to the law of the case; and in the latter, as regards a question of fact.

He is wrong in law, because in the case of talooks recorded as such at the decennial settlement, the *onus probandi* in suits of this kind lies with the zemindar, and not with the talookdar; as declared in Clause 1, Section 51, Regulation VIII. of 1793. He is wrong as to fact, because it appears from a careful examination of the documents to which he refers, that the rent did not vary to the extent supposed; the difference in its amount, as recorded in the papers of 1207 and in those of previous years, being in a great measure, although not entirely, the difference between the Arcot and the Sicca currency.

The plaintiff does not assert that the rent of the talook has ever varied since the decennial settlement. The variations in the rent on which the claim rests, are alleged to have taken place at an earlier period.

From the decision of the deputy collector, referred to by the principal sudder ameen, it appears that a claim to re-assess the defendants' talook, instituted by the revenue authorities under the provisions of Regulation IX. of 1825, was dismissed in the year 1837, on the ground of possession by the talookdars, since the year 1195 B. S., at one uniform rate of rent; the slight variations in the rent about the period of the decennial settlement being attributed to errors of account. This decision of the deputy collector was subsequently annulled by the special commissioner in appeal, on technical grounds; but the facts stated in it are entitled to all due consideration, the more so that there seems reason to believe that the documentary evidence on which it was based has been lost or mislaid in some of the Government offices. This loss, however, has not been allowed to operate to the defendants' prejudice; the more important documents having been copies of records in the collector's office, and that officer having been called upon by this court to file the originals of all the records in his possession bearing on the point at issue. This requisition has been complied with to the fullest extent; and the documents thus obtained, together with others filed by the plaintiff and the defendants, respectively, supply ample materials for arriving at a correct judgment in the case. These documents are:—

1. Original zemindary *jumma wassil bakee*, or account of demands, collections, and balances, dated 1195 B. S.
2. Original zemindary *besh khast* papers, exhibiting the increase and decrease of the rent-roll for 1196.
3. Original zemindary *jumma wassil bakee* for 1198.
4. Original zemindary *terij jumma bundobust*, or abstract of assessment, for 1199.
5. Original zemindary *jumma wassil bakee* for 1200.
6. Copies of zemindary *jumma wassil bakee* for 1201, 1202, and 1203.

7. Original zemindary *jumma wassil bakee* for 1204.

8. Original zemindary *bakeejay khezana*, or statement of balances, for 1205.

9. Original *tahood mildnee* papers, or rent-roll of the zemindary, on which the decennial settlement was based, for 1207.

The plea of a *mocurreree* title is very easily disposed of. No evidence of any kind having been adduced in support of it, it must be rejected.

It remains to be considered whether the plaintiff's right to raise the rent of the talook, founded on additions alleged to have been made to the rent at the decennial settlement, and during the years immediately preceding it, be established by the evidence deducible from the documents detailed above. There is no other evidence.

From those documents, elucidated by the collector's report of the 27th October last, it appears that the rent of the talook in the years 1195 and 1196 was Arcot rs. 318-9-1. From 1198 to 1201, both inclusive, it was Arcot rs. 318-9-10. From 1202 to 1205, both inclusive, the provisions of Regulation XXXV. of 1793 were acted upon, accounts being kept both in the Arcot and Sicca currency; and during that period the rent continues to be recorded at Arcot rs. 318-9-10, with an additional column for the amount in the new or Sicca currency; and the rent, when converted into the latter, is given as rs. 306-6-15-1 in 1202, and rs. 306-6-19 in the three following years: this last trifling difference is doubtless an error of account. In 1207, the year of the decennial settlement, the Arcot currency is omitted, and the rent recorded at Sicca rs. 306-11.

It appears then, that the only variations in the rent, at the period of the settlement and during the preceding twelve years, were to the extent of 9 Arcot gundahs from 1198 to 1205; and, further, of 4 annas and 1 gundah Sicca in 1207.

The point for decision thus revolves itself into the question—whether, as pleaded by the defendants, these slight variations in the rent are to be viewed only as errors of account; or, as argued by the plaintiff, in the light of additions to the rent in the sense contemplated in Regulation VIII of 1793?

In the absence of all proof, I cannot admit the validity of the plea that there are mere errors of account. The documents from which the amount rent claimed and paid during the period in question has been ascertained, enter into far too much detail to admit of such a supposition; and so far from the tenure having any thing of a *mocurreree* or *istemreree* character, with an unalterable fixed rent, it appears from the *jumma wassil bakee* of 1195 that the rent was raised in that year by no less a sum than rupees 105-14-16.

On the recognized principle, therefore, that the rent of talooks of this description is not exempt from increase, unless it be proved that the rent paid at the time of the permanent settlement, and during the preceding twelve years, was a given fixed sum, I must give a decree declaratory of the plaintiff's right to re-assess the talook.

The appeal is dismissed, with costs; and the decision of the lower court, so far as relates to the order declaring the talook liable to re-assessment, affirmed. The costs incurred in the lower court will be charged by the principal sudder ameen, in the usual manner, after the question of the amount rent has been determined.

THE 8TH APRIL 1848.

Case No. 5959 of 1845.

*Regular Appeal from a decision of Moolvy Mahomed Ali,
Principal Sudder Ameen, dated 21st August 1841.*

Annund Mye Chowdrain, (Defendant,) Appellant,

versus

Musst. Jumoona, (Plaintiff,) Respondent.

SUIT laid at Sicca rupees 1,592-10-5-3-1-10.

This suit was originally instituted on the 10th July 1838, for possession of real property under the Hindoo law of inheritance, with mesne profits from the month of Maugh 1237 B. S.

On the 27th March 1845, after sundry appeals, regular and special, the officiating judge gave plaintiff a decree for a $\frac{1}{4}$ th share of the real estate of Kishen Jeewun Naug, deceased, with mesne profits.

On the 24th November 1846, a special appeal from this decree was admitted by the Sudder Court, on the following grounds:—*first*, because mesne profits had been awarded from the year 1236, although only claimed from 1237; *secondly*, because objections raised by the defendant to certain items in the accounts, for the amount of which she had been declared liable, had been overruled, without the reasons for their rejection being assigned; and, *thirdly*, because costs had been charged to defendant on the entire amount at which suit was laid, although the claim was only decreed in part— $\frac{1}{3}$ rd of the estate having been sued for, but only $\frac{1}{4}$ th decreed. In other respects, the decree of the 27th March 1845 stands good.

With respect to the first and last of these reasons, there can be no doubt that the zillah court was in error: but the former was only a clerical error—mesne profits ought to have been awarded only from Maugh 1237; and the defendant should have been charged with costs in proportion only to the value of the property decreed, as compared with the value of the claim.

The objections raised by defendant to the amount mesne profits for which she has been made liable, are six in number:—*viz.* *first*, that the sum reported by the ameen to have been collected by defendant from the ryots and others, for which *dakhilas*, or receipts are filed, is wrongly stated at Sicca rupees 1,629-11-4-3-2; *secondly*, that the different items composing the sum of Sicca rupees 5,401-11-19-3-15, for which *dakhilas* are not forthcoming, have not been legally proved,—each item not having been verified by the evidence of two witnesses; *thirdly*, that plaintiff is not entitled to any portion of the sum of Sicca rupees 1,307-2-13-1-1-1, expended in the payment of necessary fixed charges and in the liquidation of the debts of the deceased Kishen Jeewun; *fourthly*, that the sum of Sicca rupees 156 paid to Kishen Jeewun's widow, Musst. Obhya, to Musst. Taramonee, widow of plaintiff's brother-in-law, Nubeen Chunder, and to plaintiff herself, as maintenance, ought not to have been included in the accounts; *fifthly*, that defendant only received credit for Sicca rupees 271-7-3-3-2 per annum as the sudder jumma and jumma of the mehals forming the estate, instead of Sicca rupees 279-1-3-1 the proper amount; *sixthly*, that the sum of Sicca rupees 178-10-5-2, an annual allowance for religious purposes, &c., ought to have been excluded from the accounts.

The first of these objections is too vague and general to be admitted as valid. The amount of the overcharge even is not given. It is not stated where the error lies. And the defendant's vakeel acknowledges that there is no error discoverable in the recorded depositions of the parties, by whom payment of the sums covered by the receipts was proved. As a last resource, the vakeel takes advantage of the circumstance of many of the *dakhilas* having been rendered illegible by insects, since they were filed, to assert that the error would have appeared had the documents not been thus injured.

The second objection is quite untenable. The idea that the payment of each item of rent, in so large a property, after so long a period, could ever be proved by two witnesses, unless, indeed, perjury were had recourse to, is preposterous. In the present case, the witnesses are the defendant's own gomashtas and farmers, or their heirs, and other parties by whom the payments were made.

The third objection is made on better grounds; and the amount to which it refers, Sicca rupees 1,307-2-13-1-1-1, must be deducted

from the aggregate amount of Sicca rupees 5,641-11-4-0-1, to a fourth part of which the former decree declared the plaintiff to be entitled. The sum in question is composed of old assignments of rent, granted with the sanction of the general body of proprietors, for the payment of certain permanent miscellaneous charges, and for the liquidation of debts of the deceased, Kishen Jeewun.

The fourth objection I reject; the evidence by which the payment of the allowance to the plaintiff and her relatives Mussts. Obhya and Taramonee is sought to be established, having been previously rejected by the officiating judge, in his decision of the 14th March 1843, as insufficient and unworthy of credit, and nothing having occurred since to make it appear that the conclusion then arrived at was incorrect. The evidence referred to, is that of the witnesses, Rajkishto and Gouchunder, before the local ameen; and although their evidence given before the officiating judge bore reference to the payment of a maintenance allowance to plaintiff alone, that circumstance does not affect the case.

The fifth objection I reject, because it is unsupported by any evidence whatever, and is opposed to the facts of the case as previously established. A bill of sale was put in to prove that the jumma of one of the talooks was less by 1 anna than the jumma of the same talook as stated by the ameen; but, on examining the document, it appears that even in respect to this petty sum the defendant is wrong, and the ameen right.

With regard to the sixth and last objection, the defendant's vakeel admits that the sum to which it refers is included in the item of Sicca rupees 1,307-2-13-1-1-1, previously disposed of.

The various points noticed by the Sudder Court having thus been considered and determined, the following modifications will be made in the officiating judge's decision of the 27th March 1845:—the period from which mesne profits are to be awarded will be the month of Maugh 1237; costs will be charged to the defendant in proportion to the value of the decree, as compared with the value of the claim; and the sum of Sicca rupees 1,307-2-13-1-1-1, will be deducted from the amount rents ascertained by the ameen to have been collected since the period of plaintiff's dispossession, *minus* the usual allowance for expenses of management, and the sudder jumma and jumma of the mehals. In all other respects, the decree of the 27th March 1845 will be conformed to. Plaintiff has been so long kept out of her just rights by the defendant, that she is entitled to interest on the reduced amount mesne profits now awarded, from the date of the officiating judge's decision; no alteration in the previous order on this point will therefore be made.

THE 13TH APRIL 1848.

Case No. 13 of 1847.

Regular Appeal from a decision of Moolvy Mahomed Ali, Principal Sudder Ameen, dated 26th June 1847.

Nundcoomar Moojemdar, (Plaintiff,) Appellant,

versus

Tunoollah and others, (Defendants,) Respondents.

Suit laid at Company's rupees 798-12.

This suit was instituted on the 12th June 1846, to obtain possession of three kannees of *chiraghee* land.

The plaintiff, a dependant talookdar, stated that the land had been granted by one of his ancestors to an ancestor of the defendants, for the support of the usual services or offices at the tomb of a Mussulman saint; the grant being resumable in the event of those offices being given up. He brought his suit on the ground that the defendants, having joined the sect commonly known as *ferazees*, had destroyed the houses on the endowment, discontinued the offices, and formally restored the land to him, under a deed of resignation executed in his favor by the defendant, Tunoollah, but that they had subsequently caused him to be dispossessed by an order of the magistrate under Act IV. of 1840, in a suit brought by the other defendants.

The defendant, Tunoollah, alone appeared. He pleaded the right of rent-free occupancy, in virtue of a grant in favor of his ancestor, made by the zemindar, in the year 1179 B. S. The principal sudder ameen dismissed the suit. He rejected the deed of resignation, on the ground of the improbability of the circumstances under which it was said to have been executed, and with special reference to the reasons given by the magistrate for its rejection, in the case instituted by the defendants under Act IV. of 1840: and he held it to be proved by the local investigation of the moonsiff of Soodharam, who was deputed in person to make the enquiry, that the houses stated by the plaintiff to have been destroyed, and also the tomb, were still in existence; and that the offices for the support of which the plaintiff admitted that the grant had been made, had not been given up. He considered it unnecessary to enter into the merits of the title of the opposing parties.

Nothing new is advanced in appeal, unless it be the plea that it is apparent from the moonsiff's proceedings that the offices at the tomb were for a time discontinued, and were only again performed in consequence of the institution of the present suit.

With regard to this plea, it is sufficient to state that, although the evidence given before the moonsiff is contradictory, it is quite clear that the tomb and the houses connected with it, still exist;

and that the offices continue to be performed. The offices may latterly have been executed with less strictness than formerly, but up to the present time they have not been given up.

The deed of resignation, on the validity or invalidity of which the case mainly depends, is a document on which no faith can be placed. It was first rejected by the magistrate in the case instituted under Act IV. of 1840, on the grounds of non-registry and other suspicious circumstances. The circumstances connected with it were also thoroughly investigated by a moonsiff, in a regular suit in which the present defendants sued the present plaintiff for the recovery of certain documents alleged to be fraudulently withheld by the latter; and on that occasion it was established to the satisfaction of the court, that it had not been executed by the party whose name it bears. This decision of the moonsiff is stated by the respondents' (defendants') pleader, to have been affirmed in appeal, and appellant's pleader does not deny that such is the case. Finally, the deed is rejected by the principal sudder ameen, in the present suit; and there being nothing advanced in appeal in any way calculated to make it appear that these decisions are otherwise than just and proper, I do not hesitate to reject it also. The rejection of the other documents filed by the plaintiff follows as a matter of course, as they are based on the deed of resignation.

The appeal is dismissed, with costs, and the decision of the lower court affirmed.

THE 18TH APRIL 1848.

Case No. 5 of 1845.

Regular Appeal from a decision of Moolvy Mahomed Ali, Principal Sudder Ameen, dated 4th February 1845.

Kaleekanth Burdhun, (Defendant,) Appellant,

versus

Kaleekinker Ludh and Nurnarain Ludh, (Plaintiffs,) Respondents,
Musst. Ombeeka, widow of Juggutchunder Ludh, deceased,
Claimant.

SUIT laid at Company's rupees 1,494-6-4-16.

This suit was instituted on the 29th July 1843, to set aside the sale of an independent talook, on the ground that the transfer was invalid under the Hindoo law.

The plaint set forth that the original transfer, which took place on the 3d Bysack 1240 B. S., although made under a bill of sale, was in fact a mortgage; and that a second mortgage of the property was executed in 1243, in favor of the same party, the father of the defendant, Kaleekanth; but that the latter, having now suc-

ceeded his father, claimed the property as his own, under the original bill of sale.

The talook was originally the joint property of two brothers, Pertab Narain and Seebchunder. The former at his death left a widow and three sons, minors: the latter dying, left a widow and two sons, one of whom, Rajchunder, was of age, and the other a minor. Rajchunder in conjunction with the two widows, sold the talook to one Bholanath, the father of the defendant, Kaleenath. The suit was brought by the surviving minor sons, on attaining their majority, to set aside the sale, so far as their interests were concerned.

The principal sudder ameen decided that the transfer of 1240 was a *bonâ fide* sale; rejecting the plea of mortgage. But, on the ground that the widows did not possess the power to alienate the property, he held the sale to be illegal and cancelled it.

The officiating judge, on the suit being appealed, concurred with the principal sudder ameen as to the facts of the case; but being of opinion that the sale was valid under the Hindoo law, with reference to the circumstances under which it took place, he upheld it, and dismissed the suit.

On the 24th June 1847, a special appeal from the officiating judge's decision was admitted by the Sudder Court, and the case remanded—on the ground that it did not appear from the decision, whether the requirements of the Hindoo law, which alone could sanction a sale of this nature, had, or had not, been attended to.

The circumstances under which the mortgage is said to have taken place are so improbable, that I entirely concur with the officiating judge and the principal sudder ameen, in rejecting the evidence adduced to prove them, as unworthy of credit. I am further of opinion, that the transaction of 3d Bysack 1240, was a *bonâ fide* transfer: but there can be no doubt, I think, that it was not of a nature to be recognized by the Hindoo law.

In upholding the transfer of 1240, the officiating judge was influenced by the evidence adduced by the defendant, Kaleenath, to prove that the sale was made by the widows to enable them to discharge the Government revenue of the talook, and liquidate the debts of their deceased husbands, and consequently, that the sale was good and valid under the Hindoo law. This evidence would appear, however, to be utterly worthless. In the first place, it must always have been very suspicious, being opposed to the reason given in the bill of sale, for selling the talook, viz. deterioration of assets, and consequent inability on the part of the venders to pay the Government revenue, and having been adduced for the first time in appeal. But in the second place, it would appear that the plea which it is adduced to prove, was founded, from the first, on a misapprehension of facts, by the

defendant; and that he has brought witnesses to prove all the details of a transaction which his documentary evidence, when thoroughly examined, directly disproves.

It appears that the talook having been advertised for sale, both at the commencement of 1240 and of 1241, for arrears of Government revenue, the defendant took advantage of the circumstance to endeavour to make it appear that the private sale by the widows, at the commencement of 1240, had been effected partly to enable the venders to liquidate the debts of their deceased husbands, and partly to enable them to prevent the public sale of the talook, though, why one sale should have been had recourse to in order to prevent another, does not appear.

To make out his case, the defendant filed an authenticated copy of the memorandum usually laid before the collector when estates are put up for sale. This memorandum states that the sale of the talook had been fixed for the 10th Bysack 1240, *i. e.* seven days after the date of the private sale; but that the balance, amounting to rupees 528 and a few annas, had been paid up before the sale came on. The defendant therefore brought witnesses to prove that this balance was due on account of 1239, and had been paid out of the purchase money received from him. The witnesses stated the exact sum remitted for this purpose to the sudder station, to be 530 rupees.

The memorandum exhibiting an evident error in respect to the year of sale, the collector's amilah had appended a note to it, by way of rectifying the error; but as this note only made matters worse, I called for the original papers connected with the sales advertized both for 1240 and 1241, and from them it clearly appears, not only that the balance of rupees 528 was due on account of 1240, and not on account of 1239, as stated by defendant, and that it was not due, and was not paid, till Bysack 1241, *a year after the private sale*; but that the balance of 1239 amounted only to rupees 389-10-3, and therefore, that it was not necessary to make a remittance of rupees 530 on that account; and further, that the balance of 1239 was realized, not by a cash payment by the defaulters, but by a transfer of surplus sale proceeds, realized by the sale of another talook.

The defendant's plea, therefore, that the sale was valid under the peculiar circumstances of the case, necessarily falls to the ground.

The decision of the lower court is affirmed, except as to the order relative to costs, which ought to have made appellant liable only in proportion to the value of the decree, as compared with that of the claim. The decision should also have declared specially that the other defendants were exonerated from liability, and that Goluck Chunder, the only one of them who appeared, was

liable for his own costs. The decision ought further to have stated distinctly that the decree only extended to the plaintiff's interest in the talook. The appeal is dismissed with costs.

THE 19TH APRIL 1848.

Case No. 12 of 1847.

Regular Appeal from a decision of Moolvy Mahomed Ali, Principal Sudder Ameen, dated 3d June 1847.

Chunder Kishore Rai, (Plaintiff,) Appellant,

versus

Ramraja Rai and others, (Defendants,) Respondents.

Suit laid at Company's rupees 458-10-8.

This is an action of debt, with interest equal to the principal.

The bond bears date the 29th Jeyte 1241 B. S., eleven years, eleven months and seventeen days prior to institution of suit; and is said to have been executed by one Ramkonye, who died in 1247, after having paid only one instalment of 100 rupees, although the whole debt rupees 315 was payable within the year in which the bond was executed.

Of seven subscribing witnesses, two only are alive; and their evidence is so meagre, and exhibits such ignorance of the circumstances connected with the transaction, which was not a money one, that the principal sudder ameen dismissed the suit, without going into the merits of the defendants' pleas.

In appeal it is urged that the defendants, although not confessing judgment, do not absolutely deny the claim: that appellant is entitled to a decree, under the provisions of Section 15, Regulation III. of 1793, two witnesses having spoken to the execution of the bond: and that Nubkishore, the party through whom the instalment of rupees 100 was paid in 1241, a person of undoubted respectability, and others present at the original transaction, if summoned, would prove the claim.

The first of these pleas is not warranted by the defence. The second is of no weight, as the law quoted does not make it imperative on the courts to decree a claim, simply because it is, to a certain extent, supported by two witnesses, but only declares that payment shall not be decreed, unless the bond be proved to have been executed in the presence of two credible witnesses: and assuredly, the circumstances of the present case are not such as to call for any relaxation of the spirit of the law. With regard to the third plea, it is sufficient to state that the witness, Nubkishore, is dead; and that neither he, nor the persons alluded to as having been present at the original transaction, were named as witnesses in the lower court.

There being no reason for interfering with the decision of the principal sudder ameen, it is hereby affirmed, and the appeal dismissed with costs.

THE 22D APRIL 1848.

Case No. 19 of 1847.

Regular Appeal from a decision of Moolvy Mahomed Ali, Principal Sudder Ameen, dated 26th July 1847.

Ranee Kuteeanee, (Defendant,) Appellant,
versus

Suderoodeen, (Plaintiff,) Respondent.

SUIT laid at Sicca rupees 1,917-2-10.

This suit was instituted on the 14th February 1845, for the refund of the above sum, exacted by defendant from plaintiff and his deceased brother Kameelondeen, in excess of the rent properly payable by them on account of their dependant talook Mahomed Reza, from Poos 1248 to Aghun 1251 B. S.

Plaintiff was nonsuited by the principal sudder ameen, on the 3d May 1845, on the ground that the plaint did not specify, with sufficient detail, the circumstances under which the exactions were made : but this order was reversed by the officiating judge on the 3d July following, and the case remanded for investigation.

On the 26th July 1847, the suit was brought to a final hearing by the principal sudder ameen, and judgment given for plaintiff : but, on the plea that the defendant's objections to the claim had been rejected by the officiating judge, when the case was before him in appeal from the order nonsuiting the plaintiff, the principal sudder ameen held that it was unnecessary to consider them ; and even refrained from passing any specific orders on a petition filed by defendant on the 10th July 1847, containing several objections to the proceedings of an ameen who had been deputed to ascertain the quantity of land in plaintiff's possession, and other particulars. In reality, therefore, the suit has been decided *ex parte*, although the defendant has been present from first to last.

On referring to the officiating judge's proceedings, I find that not only are the defendant's objections to the claim not rejected, but that it is not even stated what they are. But had it been otherwise, the officiating judge's order could not, by any possibility have had reference to the proceedings of an ameen, who, at the time the order was passed, had not been appointed.

The decision of the 26th July 1847 is annulled, and the case remanded for investigation on its merits *de novo*, the answer to the plaint, and the objections to the proceedings of the ameen to be duly attended to and considered, and admitted or rejected as may be just and proper. The usual order will issue relative to a refund of the value of the stamp on which the petition of appeal is written.

THE 22^D APRIL 1848.

Case No. 16 of 1847.

*Regular Appeal from a decision of Moolvy Mahomed Ali, Principal
Sudder Ameen, dated 2d July 1847.*

Ramchunder Ghose, (Plaintiff,) Appellant,

versus

Ranee Hurreemalah Debia and others, (Defendants,)

Respondents.

SUIT laid at Company's rupees 2,532-13-4.

This suit was instituted on the 25th February 1847, for the recovery of Sicca rupees 1187-4-10, the amount of three dakhilas or receipts for rent, granted by Ranee Hurreemalah, to the plaintiff, on the 17th Falgoon 1241 B. S., with interest equal to the principal.

The principal parties are the plaintiff on the one part, and the ranee on the other; and the point at issue is the liability or non-liability of the latter. As to the facts of the case, they are for the most part agreed.

It appears that the ranee's talook was let in farm for seven years, from 1241 to 1247, Tipperah, to the defendant, Ramrutten, and by him under-let to the plaintiff for six years, viz. from 1242 to 1247: that the rent payable by Ramrutten, falling into arrear, the ranee brought the talook under attachment from the year 1244, collecting the rents through her own servants, and giving plaintiff dakhilas for the amount so collected, including a sum of 150 rupees paid by plaintiff himself: that Ramrutten received credit from the ranee, for the amount covered by the dakhilas, *minus* the usual deductions from the sum collected from the tenants, for expenses of management; but that he, notwithstanding, brought a summary suit, and obtained a decree against plaintiff as his under-farmer, for a portion of the rent to which he, Ramrutten, would have been entitled had the talook not been brought under attachment, and credit not been given him for the amount included in the dakhilas.

After allowing things to take their course for a period of eleven years eleven months and twenty-six days from the date of the dakhilas, the plaintiff brings the ranee into court for the amount covered by them, on the ostensible ground that she had received the farming jumma twice over, once from her tenants during the period of attachment, and afterwards from Ramrutten, but doubtless, in reality, because, having neglected to contest the summary decree, by a regular suit, within the prescribed period of one year, he sees no other way now open to him of making an attempt, however hopeless, to evade the consequences of his neglect. He has entirely failed in making out the semblance of a case against

the ranee. In appeal, he questions the legality of the attachment; but he did not do so in his plaint, or at any previous stage of the case; and the plea is negatived by his own statement in the summary suit. There is no evidence whatever of the ranee having been paid twice: and if Ramrutton, after being ejected from his farm, and after receiving credit for the rents subsequently collected, succeeded in obtaining, from the revenue court, an award against plaintiff, that is no fault of the ranee's. An action will not lie against her.

The principal sudder ameen dismissed the suit, adducing a variety of arguments to prove that the documentary evidence filed by plaintiff was of too suspicious a nature to be received: but as he ended by declaring the claim to be inadmissible, on the grounds on which I have rejected it, it was quite unnecessary thus to go into the merits of the evidence.

Nothing being advanced in appeal in any way calculated to affect this view of the case, the decision of the lower court is affirmed, and the appeal dismissed with costs.

Of the respondents, the ranee alone is present in appeal.

THE 24TH APRIL 1848.

Case No. 22 of 1847.

Regular Appeal from a decision of Moolvy Mahomed Ali, Principal Sudder Ameen, dated 9th August 1847.

Moodoosoodun Gopt, (Plaintiff,) Appellant,

versus

Burmoollah Shikdar and others, (Defendants,) Respondents.

Case No. 20 of 1847.

Regular Appeal from a decision of Moolvy Mahomed Ali, Principal Sudder Ameen, dated 9th August 1847.

Burmoollah Shikdar, (Defendant,) Appellant,

versus

Moodoosoodun Gopt, (Plaintiff,) Respondent.

SUIT laid at Company's rupees 569-3-4.

These are appeals from one and the same decision.

Plaintiff states that, during his minority, in Assar 1240 B. S., he was dispossessed by certain of the defendants, of 15 droons, 12 kannees of land, in a zemindary, the property of himself and his two brothers, Madhub Chunder and Bharat Chunder, on the ground of an alleged sale of the land by plaintiff and his brothers to the said defendants: that the zemindary was sold by auction,

in Sawun 1241, for arrears of Government revenue, and that the said defendants had been allowed to enter into engagements with the auction purchasers, as dependant talookdars. He brings this action to cancel the alleged private sale, and to recover mesne profits for the period intervening between the date on which it was said to have taken place and that on which the zemindary was sold by auction.

Plaintiff's two brothers were made defendants, but did not appear. The defendants, who did appear, pleaded their right to possession under the alleged transfer of 1240.

The suit was instituted on the 26th July 1845, and has already been twice remanded in appeal, once after a nonsuit, and once after having been dismissed. At last, on the 9th August 1847, plaintiff obtained a decree: but, for the following reasons, there must be another remand. In the first place, the decision recorded under Act XII. of 1843, makes no mention whatever of the defendants or their pleas: it does not even state, whether they entered appearance or not. In the second place, no interest is allowed, either on the amount mesne profits or costs, either for the period antecedent to institution of suit, or for that subsequent to date of decree: but no reason is given for so unusual a course. In the third place, it appears that a petition was filed by the defendants, on the 23d July 1847, containing several objections to the proceedings of the ameen deputed to ascertain the rental; but that no definite order was passed upon it.

For these reasons, the decision of the 9th August 1847 must be annulled, and the suit remanded. The principal sudder ameen will give an abstract, at least, of the defendants' pleas, admitting or rejecting them, as he may consider just and proper: he will assign his reasons for not allowing interest, if he be of opinion that it should not be awarded: he will consider the objections to the ameen's proceedings, advanced in the petition of the 23d July 1847, and pass proper orders on them; and he will then decide the case on its merits, noticing all the above points in his decision.

Appellants will receive back the value of the stamps on which their petitions of appeal are written: the other costs of both courts will be adjusted by the principal sudder ameen. .

ZILLAH TIRHOOT.

PRESENT: JOHN FRENCH, Esq., ADDITIONAL JUDGE.

THE 7TH APRIL 1848.

No. 664.

Regular Appeal from a decision passed by Moulvee Neamut Ali Khan, Principal Sudder Ameen, Mozufferpore, dated 1st September 1845.

Maharaj Koonwour Ramaput Singh, (Plaintiff,) Appellant,

versus

Moorleedhur, (Defendant,) Respondent.

THIS was for the recovery of Company's rupees 212-15-3, being 4 annas instalment rent due on account of the farm of village Kudwur, pergunnah Phuchahee, for the year 1250 Fuslee. This suit was originally instituted in the collectorate, called for from thence by the judge, and transferred to the principal sudder ameen, who dismissed the case, on the grounds the decision of the sudder ameen, dated 17th of November 1843, shewing surplus rent had been paid, and not giving credit for the same. Against this decision the plaintiff appealed, urging the receipt of the surplus rent had been denied, &c.

COURT.

This case depends also on the principal suit returned for trial by the Sudder Dewanny Adawlut as detailed in case No. 667. Under the same grounds, the decision of the principal sudder ameen is reversed, and returned, to be forwarded to the sudder ameen by that authority, to investigate and decide at the same time with the principal suit. The amount of stamp of appeal plaint to be returned, and one-fourth of the customary fees to be paid to the attorney.

THE 7TH APRIL 1848.

No. 665.

Regular Appeal from a decision passed by Moulvee Neamut Ali Khan, Principal Sudder Ameen, Mozufferpore, dated 1st September 1845.

Maharaj Koonwour Ramaput Singh, (Plaintiff,) Appellant,

versus

Moorleedhur, (Defendant,) Respondent.

THIS was for the recovery of Company's rupees 159-5-6, rent due on 3 annas instalment on account of the farm of village Kadwur, pergunnah Phuchahee, for the year 1250 Fuslee. This

suit was originally instituted in the collectorate, called for from thence by the judge, and transferred to the principal sudder ameen, who dismissed the case, on the grounds the decision of the sudder ameen, dated 17th of November 1843, shewing surplus rent had been paid, and not giving credit for the same. Against this decision the plaintiff appealed, urging the receipt of surplus rent had been denied, &c.

COURT.

This case depends on the principal suit returned for trial by the Sudder Dewanny Adawlut as detailed in case No. 667. Under the same grounds the decision of the principal sudder ameen is reversed, and returned, to be forwarded by that authority to the sudder ameen, to investigate and decide at the same time with the principal suit. The amount of stamp of appeal plaint to be returned, and a fourth of the customary fees to be paid to the attorney.

THE 7TH APRIL 1848.

No. 666.

Regular Appeal from a decision passed by Moulvee Neamut Ali Khan, Principal Sudder Ameen, Mozufferpore, dated 1st September 1845.

Maharaj Koonwour Ramaput Singh, (Plaintiff,) Appellant,

versus

Moorleedhur, (Defendant,) Respondent.

THIS was for the recovery of Company's rupees 203, 12 annas, 9 pie, being 3 annas instalment rent, due on account of the farm of village Gungapore, pergunnah Phuchahee, for the year 1250 F. S. This suit was originally instituted in the collectorate, called for from thence by the judge, and transferred to the principal sudder ameen, who dismissed the case, on the grounds the decision of the sudder ameen, dated 17th of November 1843, shewing surplus rent had been paid, and not giving credit for the same. Against this decision the plaintiff appealed, urging the receipt of the surplus rent had been denied, &c.

COURT.

This case depends also on the principal suit returned for trial by the Sudder Dewanny Adawlut as detailed in case No. 668. Under the same ground the decision of the principal sudder ameen is reversed, and remanded, to be forwarded by that authority to the sudder ameen, to investigate and decide at the same time with the principal suit remanded by the Sudder Dewanny Adawlut. The amount of stamp of appeal plaint to be returned, and one-fourth of the customary fees to be paid to attorney.

THE 7TH APRIL 1848.

No. 667.

Regular Appeal from a decision passed by Moulvee Neamat Ali Khan, Principal Sudder Ameen, Mozufferpore, dated 1st September 1845.

Maharaj Koonwour Ramaput Singh, (Defendant,) Appellant,
versus

Moorleedhur, (Plaintiff,) Respondent.

AMOUNT of action was for Company's rupees 493-12-3, and the suit for reversal of the decision passed by the assistant collector in a summary suit for resumption of farm of the village Kudwar, pergunnah Phuchahee, arising from not having regularly paid up the rent. Decision of the assistant collector is dated 16th November 1843, awarded on the grounds the rent had not been regularly paid, the farm to be resumed.

The principal sudder ameen, on the grounds of the decision passed by the sudder ameen on the 17th November 1843, shewing surplus rent had been paid by the farmer, reversed the assistant collector's decision. This was appealed against.

COURT.

From the principal suit on which this case depends being appealed to the Sudder Dewanny Adawlut, which was taken up by that Court under special appeal, reversed that decision and returned for trial, to prove the validity of the receipt for rupees 625, (*vide* decision of the Sudder Dewanny Adawlut, dated 7th April 1847, No. 752 of 1845.) Under the above circumstance it becomes necessary to reverse the principal sudder ameen's decision, and to return the case to him, to forward to the sudder ameen, to investigate at the same time with the case for rent returned by the Sudder Dewanny Adawlut. The amount appeal plaint returned, and the fourth of the customary fees to be paid to the attorney.

THE 7TH APRIL 1848.

No. 697.

Regular Appeal from a decision passed by Moulvee Neamat Ali Khan, Principal Sudder Ameen, Mozufferpore, dated 1st September 1845.

Maharaj Koonwour Ramaput Singh, (Plaintiff,) Appellant,
versus

Moorleedhur, (Defendant,) Respondent.

THIS was for the recovery of Company's rupees 293-2-3, being 4 annas instalment rent due on account of the farm of village Gungapore, pergunnah Phuchahee, for the year 1250 Fuslee.

This suit was originally instituted in the collectorate, called from thence by the judge and transferred to the principal sudder ameen, who dismissed the case, on the ground the decision of the sudder ameen, dated 17th of November 1843, shewing surplus rent has been paid, and not giving credit for the same. Against this decision the plaintiff appealed, urging the receipt of the surplus rent had been denied, &c.

COURT:

This case depends also on the principal suit returned for trial by the Sudder Dewanny Adawlut as detailed in case No. 668. Under the same grounds the decision of the principal sudder ameen is reversed, and remanded, to be forwarded by that authority to the sudder ameen, to investigate and decide at the same time with the principal suit remanded by the Sudder Dewanny Adawlut. Amount of stamp of appeal plaint to be returned, and one-fourth of the customary fees to be paid to the attorney.

THE 7TH APRIL 1848.

No. 668.

Regular Appeal from a decision passed by Moulvee Neamut Ali Khan, Principal Sudder Ameen, Mozufferpore, dated 1st of September 1845.

Maharaj Koonwour Ramaput Singh, (Defendant,) Appellant,
versus

Moorleedhur, (Plaintiff,) Respondent.

In this suit the amount of action was Company's rupees 628-5, for the reversal of the decision passed by the assistant collector at Tirhoot, in a summary suit for the resumption of the farm of village Gungapore, pergunnah Phuchahee, arising from not having regularly paid up the rent. Decision of the assistant collector is dated 16th November 1843. Decreed to be resumed, on the ground the rent of the farm had not been regularly paid.

The principal sudder ameen, on the grounds of the decision passed by the sudder ameen, on the 17th of November 1843, shewing surplus rent had been paid by the farmer, reversed the decision of the assistant collector and decreed for plaintiff. The defendant appealed against this decision, urging no surplus rent had been paid, &c.

COURT.

From the principal suit on which this case depends being in a special appeal preferred to the Sudder Dewanny Adawlut, (*vide* decision of the Sudder Dewanny Adawlut, dated 7th of April 1847, No. 751 of 1845,) that Court having annulled that decision of the lower court and remanded the case for trial to the sudder ameen,

to prove the validity of the receipt for rupees 725. Under the above circumstance, it becomes necessary to reverse the decision of the principal sudder ameen, and remanding case, who will forward it to the sudder ameen, to investigate and decide at the same time with the case of rent remanded to that authority by the Sudder Dewanny Adawlut. The amount of stamp of appeal plaint to be returned, one-fourth of the customary fees to be paid to the attorney.

THE 8TH APRIL 1848.
No. 698.

Regular Appeal from a decision passed by Moulvi Neamat Ali Khan, Principal Sudder Ameen, Mozufferpore, dated 29th August 1845.

Narain Duth Panrae, principal and guardian to Ackoree Panrae, minor son of Bhyroduth Panrae, purchaser, and Kunnyahnarain, vendor, (Defendants,) Appellants,

versus

Musst. Sumputtee Bhoreeah, (Plaintiff,) Respondent.

THE amount of action laid in this case was for Company's rupees 3,000, and the suit for the cancelment of a bill of sale, dated 11th Jamaed-ul-awul 1239, Hijeree, and the reversal of the decision, dated 16th of September 1843, decreeing the 4 annas of the 16 annas of village Mutta, puttee Luchmuneeah, pergunnah Bhachole, sold under the bill required to be cancelled.

The plaintiff alleges her husband Buggutnarain, and Kunnyahnarain, were own brothers, and each held 8 annas of the above-mentioned village. That Kunnyahnarain, under an absolute bill of sale, dated 27th of March 1836, sold to her husband his 8 annas portion of this village, and also 8 annas portion of the village Kumurkud, whereby her husband held the entire possession of both the villages, and died in the year 1244 Fuslee, from which period the plaintiff has held possession. Kunnyahnarain having sold 4 annas portion of Mutta, puttee Luchmuneeah, to the Panraes, who having sued for possession and obtained a decree, on the acknowledgment of the vendor, thereby showing the collusion of the parties, &c.

The purchasers, in their answer, allege the bill of sale in the name of the husband of the plaintiff was not carried into effect, and remained with the vendor; which bill of sale was placed in their hands by the vendor, and possession was held by the vendor will be proved by decisions, summary and regular cases. When suing for the portion purchased by them, the plaintiff was aware thereof, from her submitting a petition to the judge's court on the subject. The plaintiff's husband died without issue, thereby the brother, the vendor, is heir, and the plaintiff has no title to the

property. The vendor filed no answer. The principal sudder ameen decreed in favour of the plaintiff, on the grounds: the bill of sale in name of the husband of the plaintiff being proved, and also being in possession; the bill of sale of the defendants is subsequent to that of the plaintiff, therefore null and void.

The defendant appealed against this decision, alleging: in the case of execution of the decree in favour of Meerza Reiza Ali Beig, the vendor's property was for sale by auction, then the vendor wrote the bill of sale in the name of his brother and presented it, and in that case the bill of sale was made void; after such a circumstance to make a deceitful bill of sale valid is not proper: the proofs of their allegations, submitted by them, the principal sudder ameen has not taken into consideration.

Respondent answered: the proceeding passed in the case of execution of decree of court being a miscellaneous order, did not make the bill of sale void: the husband of the plaintiff and his brother resided separate, therefore on her husband's death the vendor did not become heir to his brother. The vendor filed a razeenamah, or a relinquishment of the appeal.

COURT.

The decision, dated 16th of September 1843, shews that suit was instituted for possession arising from the vendor's name not being recorded as a proprietor of the village in the collectorate. That in the case of Meerza Reiza Ali Beig, instituted on the 3d of January 1836, against Kunnyahnarain, while that case was pending, a proclamation was issued, at the request of that plaintiff, on the 7th of March 1836, prohibiting Kunnyahnarain to alienate any of his property. The bill of sale to his brother, Buggutnarain, the husband of the respondent, in the present case, is dated 27th of March 1836, twenty days after proclamation; the collusion of the parties being clearly made, it was ordered the property should be put up to auction in satisfaction of the decree, the amount of which was discharged without proceeding to the sale of the property. The plaintiff of the present case requires the cancellation of the bill of sale granted to the Panraes, under date 11th Jumaed-ul-awul 1259 Hijeree and the reversal of the decision, dated 16th September 1843, which decrees the property sold under that bill of sale. The decision of the principal sudder ameen oversteps the plaintiff, and in a manner confirms the plaintiff to the property sold to her deceased husband under the bill of sale, dated 27th of March 1836, as proved, when the subscribing witnesses thereto have not verified the document. This circumstance and the bill of sale required to be cancelled not having been filed, exhibit the investigation of the case has not been completed; therefore, ordered, the decision of the principal sudder ameen be reversed, and the case to be returned for re-investigation. To call for the

bill of sale of the 4 annas portion of the village Mutta Puttee Luchmuneeah, sold to the Panraes, then to re-peruse the proceeding of Soojaoodeen Khan, additional principal sudder ameen, dated 2d February 1838, to ascertain whether or not the bill of sale to the husband of the respondent was a collusive compact between the brothers, and entered into to prevent the sale of the property then advertised for auction in execution of decree of court. If it be deemed a deceptive bill, in that case can it ever be brought forward without the contamination, in any other case, as a valid document? If not thrown out, but deemed valid, it will be necessary the subscribing witnesses thereon should be called to give their evidence to verify the bill of sale, and it is to be borne in mind that the bill of sale of 4 annas of the said village has not been verified by the evidence of the subscribing witnesses thereon; after full re-investigation of the case to pass a decision according to the merits thereof. Amount of stamp of appeal plaint to be returned.

THE 8TH APRIL 1848.

No. 794.

Regular Appeal from a decision passed by Moulvee Neamut Ali Khan, Principal Sudder Ameen, Mozufferpore, dated 29th August 1845.

Ramnauth Doss, (Plaintiff,) Appellant,

versus

Kunyahnarain, vendor, Musst. Suntputtee Bhoreeah *alias* Endrawuttee Bhoreeah, the widow of Buggutnarain, deceased, (principal Defendants,) and, Mohunt Ajoodeeah Doss and two others, (Defendants,) Respondents.

THE amount of action is laid at Company's rupees 2,982-10-6, being 18 times the rent-roll of the village sued for. This suit is for the reversal of the proceeding of the session judge, dated 26th of April 1844, and also for possession and mutation of his name in the records of the collectorate, of the whole 16 annas of village Kumarkud, puttee Kumtoleah, pergunnah Bhuchore.

The plaintiff alleges the defendant, Kunyahnarain, being in possession of the entire above mentioned village, sold it to him under bill of sale, dated 1st of Agrahun 1249 Fuslee, for the sum of rupees 2,500, 8 annas, being his own right, and the other 8 annas as heir to his brother, Buggutnarain, who died without leaving any issue, afterwards the widow of Buggutnarain disputed possession, and the matter was taken up by the magistrate, under Act IV. 1840, who directed attachment on the part of the Government; on

appeal the session judge let the widow into possession, which was contrary to a decision passed on the 22nd April 1843, in a case in which Kunnyahnarain vendor sued Ajoodeeah Doss and others; the widow is proved not to have been dispossessed.

The widow, in her answer, alleged her husband was 8 annas sharer in his own right, and had purchased the other 8 annas under bill of sale, from which period her husband and herself have been in possession. Her husband having died without issue, his property does not devolve to his brother, being previously separated. The decision of the sudder ameen does not affect her right and title to the property; and that she had disposed of the whole of the village under bill of sale, dated 1st May 1844, for 1000 rupees, to Goosaen Ramsurrun Doss, who has not been made defendant in this case by the plaintiff.

Answer of the vendor. The claim of plaintiff is just, and that of the female is incorrect.

Ramsurrun Doss filed a 3rd party petition, urging his claim to the property, the female defendant having sold the village to him.

The principal sudder ameen dismissed the suit, on the grounds: possession by the widow of Buggutnarain having been proved, the plaintiff's bill of sale is therefore null and void. The ekrarnamah, or agreement, dated 1st of Agrahun 1249 Fuslee, stated to have been written by the vendor and filed in this case, proves the widow was in possession, if not, it was not necessary to write the agreement.

Against this decision the plaintiff appealed, urging the papers and proofs filed clearly prove his case, which were not taken into consideration by the principal sudder ameen. The agreement written to strengthen the bill of sale.

The widow, respondent, answered the decision of the principal sudder ameen, and the answer filed in the appeal case, No. 968, Naraenduth Panrae, are sufficient answer to this appeal.

COURT.

The ekrarnamah, or agreement, does not acknowledge the whole village to be in the possession of the widow, defendant, but it infers a doubt whether the vendor himself is entitled to the whole village, by agreeing to make good such portion the purchaser cannot obtain by land in other villages. This case is also governed by the proceeding passed on the 2nd of February 1838, by the additional principal sudder ameen, owing to half of this village being inserted in that deceitful bill of sale supposed to be entered into by the two brothers; therefore the decision of the principal sudder ameen in this case is reversed, and remanded, to be re-investigated as far as circumstances admit, as in the case No. 698. The amount of stamp of appeal plaint to be returned.

THE 28TH APRIL 1848.

No. 786.

Regular Appeal from a decision passed by Syed Ashruff Hoosein, Second Principal Sudder Ameen, Mozufferpore, dated 15th September 1845.

Muddungopaul, (Plaintiff,) Appellant,

versus

Reighye Rae and five others, after his death Beechuck Rae and Radha Rae, sons of Jeetun Rae, and four others, purchasers, Meer Sadut Ali, auction purchaser, (Defendants,) Respondents.

THE amount of action is laid at Company's rupees 1,489, 11 annas, 11 pie, 15 krant, 16 m., being three times the annual rent-roll of the portion of village sued for and surplus amount of produce of the same. The suit was for the redemption of 8 annas' portion of the village Bishenpore Monee Heemut, chuckla Nahee, pergunnah Beesarah, sold by Bhageerut Lall, plaintiff's father, to the defendants, under bill of sale dated 4th of Bhadoon 1238 Fuslee, for the sum of rupees 7,101, afterwards made a conditional sale by chittec, or written deed, for five years, that is, to the end of Bhadoon 1243; and the plaint further adds 2,500 rupees of the purchase money was not paid. By the usufruct of the property the principal and interest have been discharged and a surplus due to him, therefore sues under the 7th and 8th Sections, XVIIth Regulation of 1806, 2nd Section, 1st Regulation of 1798, and Circular Orders under date 22d July 1813. Four annas portion of the abovementioned 8 annas having been sold by auction, as appertaining to one of the purchasers in execution of decree of court, the plaintiff filed a supplementary petition making the auction purchaser a defendant in the case.

The defendants allege the plaintiff has not mentioned in the plaint whether they, the defendants, did or not apply for a foreclosure under the XVIIth Regulation; whether he filed any objection thereto, or deposited the purchase money in the court. The plaintiff not having made any objection when the mutation of their names was effected in the records of the collectorate, the plaint is not liable to be tried. The plaintiff's father granted them a receipt for the whole amount of the purchase money. The amount of produce mentioned by the plaintiff is exceedingly great, the land does not yield near so much.

The principal sudder ameen dismissed the case, on the grounds. In the proceeding of the mutation of the defendants' names, dated 1st June 1832, agreeing with 18th Jeyt 1249 Fuslee, mention is made the vendor acknowledged the whole of the purchase money had been received, and in the proceeding of the court under the XVIIth Regulation of 1806 to sue regularly, which was passed

in 1245 Fuslee, to which period the usufruct of the land has not been entirely realized the principal and interest, as shewn by the ameen's report.

The plaintiff appealed urging, the mutation proceeding shewing the vendor had received the whole amount of purchase money is a customary matter. The witnesses adduced by him proved that 2,500 rupees were still due. The purport of the 7th Section, XVIIth Regulation 1806, is, previous to the foreclosure, if the land be in the possession of the purchasers, and from the usufruct thereof the whole of the principal of the loan has been realized, then the land is to be resumed and put in the possession of the vendor. If interest has not been realized in this case, the principal having been discharged, the land is to be put in possession of the vendor.

Respondents allege the objection made that the purchase money had not all been paid is erroneous, for at the time of the mutation of their names the vendor acknowledge the whole amount had been received. Not having sued for possession after the order, passed under the XVIIth Regulation 1806, to sue for possession, arose from being previously in possession. Enquiry regarding the produce of the land was perfectly made in the original case.

COURT.

From the perusal of the papers it appears the original bill of sale, as well as the chittee, or document, which made the sale conditional, that is, for the period of five years, are withheld : a copy of the bill of sale obtained from the office of register of deeds is filed. The deed making it conditional not being filed is of no consequence, as both parties acknowledge the bill of sale to be conditional. The purchasers having applied for a foreclosure of the sale, after the expiration of the term, under the XVIIth Regulation of 1806, and the vendor having answered it by petition denying the receipt of the whole amount of purchase. The purchasers were let in possession very shortly after execution of the deeds and obtained mutation of their names in lieu of that of the vendor in the records of the collectorate, previously to the foreclosure or the sale rendered absolute by a decree of court ; two of the purchasers, Reighye Rae and Jeetun Rae, having a decree passed against them, their portion in that sale and mutation was put up and sold at auction in execution of that decree ; both these circumstances occurring prior to any decree having been passed rendering the sale absolute, they yield no beneficial efficacy to the parties concerned therein, are deemed by this court nullities, tending to infringe the salutary rules laid down in the 1st Regulation of 1798, and the XVIIth Regulation of 1806.

Although in the mutation proceeding dated 1st of June 1832, mention is made that the vendor acknowledged the whole amount of purchase money had been received, yet it does not appear the

vendor himself attended at the collectorate to make the acknowledgment, nor did witnesses give evidence to that effect ; it was a mere declaration set forth in a petition signed by mooktars, which cannot be taken in court as proving the whole amount of purchase money had been paid to the vendor. The witnesses adduced by the respondents in this case regarding that point, the money does not appear to have been paid over in their presence. The witnesses, Chotee deposed there were ten bags of money, and Boodun Kunwar that there were four or five bags of money. Notwithstanding this discrepancy the appellant's claim to redemption of the land is not established. In the first place his own witnesses deposed that the unpaid sum of rupees 2,500 of the purchase money was an insertion in the bill of sale, in order to prevent Kishen Jewun, one of the sharers in the village, claiming pre-emption thereof ; this shews the sum of rupees 2,500 was merely nominal, consequently neither payable or demandable, and at the same time declares the bill of sale to be a deceptive deed.

In order to redeem the property the appellant should, on or before the expiration of the term of the conditional deed, have applied to the court for the redemption, as enjoined under 2d Section, 1st Regulation of 1798, and 7th Section, XVIIth Regulation of 1806 ; nor did he sue within one year after the application of the respondents for foreclosure under the 8th Section, XVIIth Regulation 1806, or even within a year from the 29th of November 1837, the date the court directed the respondents to sue regularly for possession, but instituted this suit on the 5th of August 1844, nearly seven years after. Not having conformed to any of the rules laid down in the 1st Regulation of 1798, or those of the XVIIth Regulation of 1806, for redeeming the property, and having delayed institution of this suit for near seven years after the order passed by the court on respondents' application for foreclosure, this suit is barred by lapse of time under the above cited Sections and Regulations.

IT IS THEREFORE ORDERED,

That the appeal be dismissed. It is at the same time necessary to state, as the respondents' mortgagees have not sued regularly to render the sale conclusive, they cannot be considered *bond fide* proprietors thereof, until such times a decree be obtained by them rendering the sale conclusive ; hence the 4 annas' portion thereof sold by auction in execution of decree of court, prior to the mortgagees being declared proprietors thereof by decree of court, that auction purchaser's title must also be deemed unstable. By dismissal of the appeal, the principal sudder ameen's decision is in a manner affirmed. The costs chargeable to the appellant.

THE 28TH APRIL 1848.

No. 125.

Regular Appeal from a decision passed by Mohummud Allum, Moon-siff of Coylee, dated 24th of December 1845.

Chuterdarree Singh and ten others, (Defendants,) Appellants,

versus

Munnoo Singh, (Plaintiff,) Respondent.

THIS suit was for the mutation of his name in the records of the collectorate of $3\frac{1}{2}$ cowries and a trifle more within 16 gundahs portion of the puttee, or portion, denominated Ruttun, of the whole 16 annas of village Attree, pergunnah Bubrah. Action laid at Company's rupees 4-8, being three times the amount of the annual rent roll.

Purport of the plaint is, the $3\frac{1}{2}$ cowries and a trifle more, appertains by descent agreeable to genealogical table and the malikana, &c., are in his possession, but not in his name; in the mutation that of Par Singh and others of his ancestors, are recorded. The land being held jointly with others, and apprehending it may be put up to sale with other portions of the village, by the proprietors not paying their revenue, he sues for the mutation of his name and the division of his portion from the others of the village.

Defendants, Nukut Singh and eight others, in answer, allege the plaintiff has no concern in the village: sundry litigations have arisen between the proprietors, and this person has never come forward at those times with any claim.

Defendants, Dawar Singh and Bundoo Singh, allege the plaintiff's claim to be correct, and is in possession of his share.

Sheehoo Dyal Singh, defendant, alleges the plaintiff has a share in the village and the defendants are incorrect.

Defendants, Chum Singh and fourteen others, allege the plaintiff has no share in the village.

The remaining defendants filed no answers.

The moonsiff decreed in favour of the plaintiff, on the grounds the plaintiff's father's name is inserted as proprietor in the six months' papers, and the evidence of witnesses proved the plaintiff is a proprietor and in possession.

The defendants, Chuterdarree Singh and ten others, appealed, urging the decision of the moonsiff to be contrary to proof in the face of the case, the plaintiff has not been in possession for more than thirty-two years, and the suit is barred under limitation rules.

Respondent answered he was still in possession, and the decision passed in the original case is a sufficient answer.

COURT.

The six months' papers, dated the year 1230 Fuslee, from which the moonsiff draws the proof, the name of Kurun Singh inserted therein, the respondent's father was a proprietor in the village. This paper is not only inadmissible as proof in court, but is proved erroneous by authenticated documents filed from the collectorate, the originals of which were called for, and compared in court, were found to be correct copies. The wurasutnamah, or document of heritage, to Kurun Singh, one of the sharers, or proprietors of the village drawn out by the kazee of the pergunnah on the declaration and attestation of witnesses, is dated 30th of March 1811. It appears Kurun Singh died in 1810 A. D., leaving Juggoo Singh, his son, and Dhawur Singh and Kullur Singh, his nephews, as his heirs, agreeably to which, after the customary advertisement for opponents to come forward with their objection to the transfer applied for, the names of the heirs were entered in the mutation book in lieu of Kurun Singh, demised, on the 30th of September 1812. The respondent was unable to adduce any documents to shew he was included therein as a proprietor, hence the evidence of his two witnesses, which was a hearsay evidence, cannot be considered as proving any thing. Under these circumstances the moonsiff's decision is reversed, and decree passed in favour of appellant; the costs chargeable to the respondent.

THE 28TH APRIL 1848.

No. 130.

Regular Appeal from a decision passed by Moulvee Syed Mohummud Wahidooddeen, Moonsiff of Mozufferpore, dated 24th December 1845.

Esherduth, (Plaintiff,) Appellant,

versus

Musst. Bankce and Musst. Jessodah, (Defendants,) Respondents.

THIS was for the recovery of Company's rupees 149-8, being principal and interest on bond dated 19th of Assar 1247 Fuslee; the principal loan was rupees 100, to be discharged at the end of the year 1247 Fuslee; 9 rupees had been paid by Musst. Bankee on the 15th of Kartick 1252. The defendants deny the plaint *in toto*, in separate answers, and the defendants deny having knowledge of each other that they should have both joined in taking a loan from the plaintiff.

Plaintiff afterwards filed a representation that he had obtained half the amount of his claim from Musst. Jessodah, consequently release her from the suit.

The moonsiff dismissed the suit, on the grounds the bond was a fabrication, and that earth had been rubbed thereon to make it appear old. Musst. Jessodah having paid her portion of the suit is no proof of the validity of the bond; the stamp on which the bond is written was purchased by another person; the defendants living separately, the cause of their joining in the bond is not explained.

The plaintiff appealed against the decision, urging the evidence of witnesses proved the writing of the bond and taking the money; the case was unjustly dismissed.

Musst. Bankee answered, the decision passed in the original was sufficient, &c.

COURT.

Considering the witnesses had not been sufficiently interrogated to elucidate truth of the matter from them, it was directed, on the 21st of September 1847, they should be brought to this court to be further interrogated, subpœna was written out, but the appellant declined to pay in the peon's expenses. Therefore it was ordered, that the appeal be dismissed, and the costs chargeable to the appellants, and the moonsiff's decision is affirmed.

THE 28TH APRIL 1848.

No. 136.

*Regular Appeal from a decision passed by Moulvee Syed Munner-
oddeen Hoosein, Moonsiff of Mahwa, dated 12th April 1845.*

Ramdial Singh, (Defendant,) Appellant,

versus

Meish Singh, (Plaintiff,) Respondent.

THIS suit was for the sum of Company's rupees 52-6-9, being the principal and interest on bond dated 3d of Bysaek 1244 Fuslee, —was decided by the moonsiff in favour of the plaintiff.

The defendant appealed against the decision on the 29th of December 1845. On the case being brought forward on the 29th of September 1847, the appellant's attorney having previously proceeded to his home very ill, notice was issued to the appellant to appoint another attorney, or attend himself to carry on his appeal suit,—not being found, a proclamation was issued and affixed up on his usual residence; and not having attended thereon or appointed an attorney; the appellant was this day called to come into court; not attending, the case was directed to be struck off the file; the appellant liable to the costs.

THE 28TH APRIL 1848.

No. 196.

Regular Appeal from a decision passed by Kaze Mohummud Allum, Moonsiff of Coylee, dated 7th February 1846.

Seetaram Sahoo, purchaser, (Defendant,) Appellant,

versus

Muhadeb Dutt, father and guardian to Goorbuksh Lall, minor,
(Plaintiff,) Respondent.

THIS suit is for pre-emption of 35 beegahs of land, in village Bilson Kullun, pergunnah Bubrah, zillah Toorkee. Action laid at Company's rupees 105, being three times the amount of the annual rent roll.

It appears Goorbuksh Lall, the minor, became proprietor of 61 beegahs of land in the said village by purchase made under bill of sale in his name, when Sheikh Sooban, another sharer in the village, disposed of the 35 beegahs, under dispute, by bill of sale to Seetaram Sahoo, the uncle of the minor. Nursing Sahoo, employed as darogah for sale of stamps in the collectorate, is said to have demanded the pre-emption, as guardian to his nephew. The defendant (appellant) denied it was demanded, &c. The uncle, as guardian to the minor, sued for pre-emption, which suit was nonsuited on the grounds, the existence of the father of the minor being proved, the father was the real guardian of his own minor son, the uncle was not guardian. Whereon the father, as guardian, instituted this suit. The moonsiff decided in his favour, arising from the circumstance: it was proved in the nonsuit case, immediately on the sale of the land pre-emption was demanded, and the purchase money tendered.

The defendant appealed, urging the suit for pre-emption was instituted beyond the prescribed period. The plaintiff is a stranger, and lives sixteen coss from the village; that he himself resides in the village, was farmer of the land under dispute, on advance, prior to the purchaser, &c.

Respondent alleged there was no irregularity under any circumstance in demanding the pre-emption, &c.

COURT.

The moonsiff's decision is passed on wrong reasoning: for the plaint in this suit does not assign any reason why the father himself did not make the demand of pre-emption and tender the purchase money, and the cause of delay in instituting this suit, which appears to have been filed in court one month and fourteen days after the nonsuit. The moonsiff's decision gives sanction for any relation or friend of a proprietor to demand pre-emption and tender the purchase for and on account of his relation or friend; this will yield precedent to innumerable cases of the kind which

should be prevented. The respondent (plaintiff) not having himself, on the part of his minor son, demanded the pre-emption, or tendered the purchase money, or instituted this suit within a month from the date of the nonsuit case, the pre-emption is not established. Therefore the decision of the moonsiff is reversed, and decree passed in favour of the appellant, the costs chargeable to the respondent.

THE 28TH APRIL 1848.

No. 627.

Regular Appeal from a decision passed by Molovi Niamut Ally Khan, the Principal Sudder Ameen, Mozufferpore, dated 11th August 1845.

Kunge Beeharee Jha, (Defendant,) Appellant,

versus

Musst. Mymud, and Shaik Futtei Ally, son of Musst. Ramoona, (Plaintiffs,) Respondents.

THIS suit was for cancelment of a bill of sale, dated 19th Jeit 1227 Fuslee, and the possession of 15 cottahs of land within 1½ beegah with garden, been lackraje, or rent free-land, situate in village Soonra, pergunnah Allapore. Action laid at Company's rupees 30, being eighteen times the annual produce.

Purport of plaint is, that 1 beegah and 10 biswas, appertaining to Shaik Boodoo, their father, who died leaving one son, Shaik Beechook, and two daughters, Musst. Mymud and Musst. Ramoona; half the property, 15 biswas, devolved to the son, and the other half to the two daughters, the plaintiffs, agreeably to which they held possession to 1251 Fuslee. Shaik Beechook sold the whole one and half beegah to Kunge Beeharee Jha under absolute bill of sale on the date abovementioned. On account of the produce of the garden for the years 1247 and 1248 Fuslee, Kunge Beeharee Jha sued, the case was dismissed, and in appeal that decision was affirmed by the additional judge. On suing for the produce on account of 1249 Fuslee, the moonsiff passed a decision in favour of Kunge Beeharee, from which period they have been dispossessed, therefore sue.

Defendant, Kunge Beharee, alleges this suit is instituted after the expiration of two twelve years, is not liable to be tried. If the plaintiffs were sharers, they would have made objections at the time the bill of sale was executed; that they have held possession to 1251 Fuslee is incorrect, &c.

The defendant, Shaik Beechook, filed no answer.

The principal sudder ameen decreed in favour of the plaintiffs, on the grounds by the evidence of witnesses the plaintiffs clearly proved the plaint; and other reasons assigned regarding this suit are set forth in the case No. 28, this day decided.

Kunge Beeharce appealed, urging the principal sudder ameen, on the mere responsibility of the evidence of witnesses, passed a decree in favour of the respondents, made no enquiry regarding possession of the land, which has been in his possession from the date of the bill of sale to this day; the respondents are residents in other villages and have never been in possession.

Respondents allege, if the bill of sale be correct, even then, agreeably to law they are entitled to a share in the property. Their residing at other places does not constitute dispossession.

COURT.

The principal sudder ameen's case, No. 28, was called for and brought from the record office. On perusal of the decision of that case, the reasons assigned therein do not much tend to elucidate proofs in behalf of the respondents in the present case. It merely mentions the bill of sale (to Kunge Beeharee) was not proved, that on appeal the additional judge dismissed the two appeals, and affirmed the decision of the moonsiff; the other portion of reasoning is foreign to the matter of this case. With respect to the suits alluded to in the plaint, that the suit for the produce of the garden on account of the years 1247 and 1248 Fuslee, was nonsuited, arising from the circumstance the plaintiff (Kunge Beeharee) not being able to produce the bill of sale to prove the proprietary right to the garden, but in the suit for the produce on account of 1249 Fuslee, the bill of sale was produced, filed, and proved by evidence of witnesses; hence the moonsiff decreed in favor of Kunge Beeharee. Two appeals were preferred against that decision, one by the defendant in the case of Shaik Mooshan, and the other by the respondents, in this case, as third party, who appeared in the appeal only. Both the appeals were dismissed by this court, and the decision of the moonsiff affirmed. In the present case, the respondents adduced two witnesses. One witness deposed he heard that Shaik Beehook partitioned the property and gave his sisters' portions, he was not privy thereto, nor could he mention when the partition took place. The other witness deposed he was eye witness to the partition, but was unable to state in what month or year it took place. Such evidence does not clearly prove the plaint. From the evidence of witnesses adduced by plaintiff (appellant) it appears females do not participate in the land of the village under dispute, and mentioned two or three instances. Be that as it may, the respondents have not proved their plaint, the appellant's bill of sale was proved in a former case, the decision is filed in this case, and proved, he has been in possession from 1227 Fuslee. Under the above circumstances the decision of the principal sudder ameen is erroneous, therefore ordered to be reversed, and decree passed in favour of appellant, the costs chargeable to the respondents.

THE 29TH APRIL 1848.

No. 795.

Regular Appeal from Adecision passed by Moulvee Niamut Ally Khan, Principal Sudder Ameen, Moozufferpore, dated 28th August 1845.

Heera Sahee and Ramoo Sahee, (Defendants,) Appellants,

versus

Kunnyah Lall, (Plaintiff,) Respondent.

THIS suit was for the recovery of Company's rupees 1,254-6-4, being the principal and interest on bond, dated 27th of Kartick 1240 Fuslee, to be discharged on the 27th of Agrahun 1240. The plaintiff purports that the defendants, Heera Sahee and others, were constituents of his house, and through his agency the revenue of their estate, Purshaud, &c., pergunnah Phuchei, was paid into the collectorate. Agreeably to accounts drawn out to the 26th of Kartick 1244 Fuslee, there was a balance due to him, Company's rupees 996, for which sum they granted a bond in the name of Ruggoo Singh, his gomashtah, or principal clerk. That Bunead Singh, whose name is inserted in the bond, was not present at the signing thereof. Ruggoo Singh, his gomashtah, having being discharged, he (the plaintiff) sues on the bond.

Heera Sahee, defendant, alleged he had no concern with the plaintiff's agency house, that Rummoo Singh, defendant, had no concern in the farm of the village, Sunker Sahee was his father, and who had died three years prior to the date of the bond, therefore the bond is a fabrication. That Ruggoo Singh, gomashtah, is dead, and his heirs should have sued.

Bunead denied all transaction in the matter, and pointed out the plaintiff had stated he was not present at the signing of the bond. Rummoo denied the plaint entirely. Ruggoo Singh, gomashtah, filed a third party petition, denying any claim to the bond, that it was the property of the plaintiff.

The principal sudder ameen decreed in favour of the plaintiff, against Heera Sahee and Rummoo Sahee, on grounds the subscribing witnesses to the bond proved the balance was due agreeably to the ledger, and that those two signed the bond. Bunead Singh, not being present at the signing of the bond, is relieved from liability.

The defendant appealed against this decision, urging the principal sudder ameen made no enquiry from whom and on account of whom the revenue was paid by the respondent. It was proved that Sunker Sahee, Rummoo Sahee, and Heera Sahee, had no concern in the farm of the village. Sunker Sahee had died prior to the date of the bond, how came his name to be mentioned therein?

Respondent, in reply, alleged the document had been filed and proved ; the decision passed was a sufficient answer.

COURT.

The plaint states the bond was granted on balance due on book account to the respondent as agent to the appellants, on the occurrence of receiving and paying the revenue of the village Purshaud, &c., which the appellants deny. The bond filed in the case is not on account of balance due on adjusted accounts, but a common loan bond for money paid, and received on execution of the bond, which is contrary to the tenor of the plaint. The cause of this difference is not explained in the pleadings, nor does there appear any enquiry was made regarding that point. Hence the investigation is incomplete, therefore, ordered the decision of the principal sudder ameen be reversed, and the case be returned for re-investigation ; first, to call on the respondent (plaintiff) to file the power of attorney, or letter constituting the plaintiff agent for the receipt and disbursement of the revenue of the village Purshaud, &c. ; if he cannot adduce any voucher to that effect, to ascertain under what circumstance the agency of the matter of revenue of the village was delegated to him ; then to take into due consideration whether it was legally delegated to him ; afterward to ascertain the cause of the difference in the wording of the plaint regarding the bond, and of the bond itself, whether it was not as easy to mention in the bond it was amount of balance due on adjustment of account as money borrowed, &c. To take into due consideration, if the persons who signed the bond did not legally constitute the respondent their agent; and if they were not legally authorized by those who had constituted the respondent, their agents, to adjust the accounts of the village Purshaud, &c., and to sign the bond, whether or not they are liable to make good the amount of bond. If both or one only be liable, it will be necessary to call on the respondent to produce in court the daily and ledger books in which the several entries have been made of which a copy has been filed in this case, the correctness of each item should be sworn to by the person or persons who made the entries in the respective books. The books should be carefully examined by the court, to ascertain whether any leaves have been surreptitiously inserted to falsify the accounts, and a gonfash tah of one of the agency houses in the town of Tirhoot should be summoned to examine the books, and to state whether, or not the books be kept correctly and in the customary agency form ; to compare the copy of accounts filed with the books, and to state whether the accounts filed be a correct copy, if not to point out the different items that do not agree with the books. For cash payment made by the respondent, should be filed a receipt if above 50 rupees on a stamp of full value for the amount paid, except the

payment was revenue paid into the collectorate, for which a receipt on stamp is not required. Having duly re-investigated the matter as above indicated, to pass decision agreeably to the merits of the case. Amount of stamp of appeal plaint to be returned to appellants.

THE 29TH APRIL 1848.

No. 856.

Regular Appeal against a decision passed by Moulvee Niamut Ali Khan, Principal Sudder Ameen, Muzufferpore, dated 10th September 1845.

Syed Mahomed Buksh, (Plaintiff,) Appellant,

versus

Shah Mahomed Mohee Alhuck, (Defendant,) Respondent.

THE amount of action is laid at Company's rupees 1,168-6-17, being the principal and interest on the profits of the farm of village Madopore Mahporee, from 1242 Fuslee, and of the village Hosaneepore, from 1246 (both in pergunnah Surrea) to the year 1251 Fuslee.

The plaintiff purports the defendant farmed portions, his own shares, in sundry villages to the plaintiff under lease dated 1st of Kartick 1232 to 1238 Fuslee, at the rent of rupees 377-5, annually, exclusive of the Government revenue thereon, on an advance of rupees 1,468, stipulating in the lease that if the lessee should be dispossessed of any of the portions in any of the villages in any manner, the lessee would make good the profits thereof by giving credit for the same from the rents payable on the other portions or shares; if the advance be not discharged at the expiration of the lease, it was to be continued on the same terms until the advance be discharged. At the expiration of the lease the defendant took a further sum of advance of rupees 1,425, and wrote an ikrar or agreement dated 2d Bhadoon 1238 Fuslee, and registered the same, it stipulated that the amount of both advances should be discharged at once at the end of the year 1245 Fuslee; if not discharged, the lease is to continue until discharged, and the interest of rupees 171, of the present advance, be deducted from the rent payable. Whereas the share in the village Madopore Mahporee, within the lease, having been transferred by decree of court to Sheik Muzur Ali, from 1242 Fuslee, and the share in the village Hosaneepore having been transferred by decree of court to Sheik Goolam Mahomud and others, from 1246 Fuslee; having been dispossessed of both the abovementioned villages, and having demanded payment of the profit arising from them agreeably to the stipulation of the lease without effect, therefore sue for the same.

The defendant, in his answer, alleges the lease expired at the end of the year 1238 Fuslee. The villages, the profits of which the plaintiff sues, are still in his possession, from the proceeds of which he has realized more than the profits, and there is surplus due to him, the defendant. Subsequent to the expiration of the lease, the lessee was dispossessed by an order from the judge. With regard to the ikrarnameh, or agreement, of the second advance, it is a fabrication, the advance was not taken. The agreement was written in the office of the kazee at Patna, and registered two months subsequently thereto; if it was a correct deed it would have been written in this district.

The principal sudder ameen dismissed the suit, on the grounds the suit is instituted on two documents; first, on a lease; the second, on an ikrarnameh, or agreement; the latter the defendant denies.

The plaintiff does not sue to establish the ikrarnameh, therefore, the suit is contrary to the circular letter of the 11th January 1839. The plaintiff has filed an account of the receipts and disbursements of 1239 Fuslee, in which it is written that the sum of rupees 171, the profits of the interest on the ikrarnameh is credited from the rent; having obtained the profit on the second advance, the suit for profits on the lease is contrary to the conditions of the lease.

The plaintiff appealed, urging: agreeably to the stipulation of the lease and ikrarnameh, or agreement, he is in possession with the exception of the two villages of which he has been dispossessed, which the respondent acknowledges; and the suit is in conformity to the terms of the lease. The judgment of the principal sudder ameen is incorrect. The 171 rupees inserted in the account of receipts and disbursements, is the interest on the 1,425 rupees of the recent advance, and in no manner the profit sued for; and the circular letter cited by the principal sudder ameen has no reference to this suit.

Answer of Bebee Urzanec, the widow of the respondent. The appellant not having been dispossessed during the term of the lease, this suit is not just.

COURT.

This suit appears to be grounded on both documents: the lease and the agreement, which is shewn by the appellant having in the original case filed both documents, and adduced witnesses to prove the validity of the agreement; hence this court is at a loss to discover that the appellant did not sue to establish it; the two documents are on one and the same transaction, although the latter is a voucher for the further advance of loan, it is on the credit of the land leased on the first document. It is true there is a sophistry in the plaint by the suit being grounded on the stipulation of the lease, but it does not

throw out the agreement as of no use in the case, for ample mention is made thereof to shew it must be taken into consideration in the investigation of the suit. The omission in the plaint to mention a portion of the stipulation in the agreement is a deception in order to benefit more largely by that in the lease, the lease pledging to make good the profits arising from any portions of any villages the lessee may be dispossessed of, and the agreement declares the rent of such villages of which the lessee may be dispossessed is to be credited for from the rents of the villages : by the act of taking the agreement with such a clause, which virtually eradicates the stipulation in the lease, hence the claim set up in the plaint is erroneous, and appellant is bound to abide by the terms of the agreement that is claim to the remission of rent of those portions of the villages of which the lessee has been dispossessed by the two decrees of court filed in this case. The principal sudder ameen not perceiving this circumstance in the trial, his investigation is thereby incomplete, therefore, the decision passed by him is reversed, and the case remanded for re-investigation on the terms of the agreement. To call on the appellant to shew the amount of rent and interest, which is to be remitted on each of the two villages taken from the lessee by the two decrees of court. It is true there is no definite specification of rent payable on each separate portion in the several villages leased, yet the appellant drew out an account of profits, which he sued for ; in the like manner and ratio, the remission of rent of each village may be formed and proved by documents and witnesses. In fact, to re-investigate the case anew on the agreement with all the requisite incidents attending thereto. Amount of stamp of appeal plaint to be returned.

ZILLAH TWENTY-FOUR PERGUNNAHS.

PRESENT: ROBERT TORRENS, Esq., JUDGE.

THE 8TH APRIL 1848.

Appeal from a decision passed by Mr. J. Weston, Sudder Ameen, on the 17th of June 1847.

Surroopchunder Bose, Ramnarain Bose, and Chand Mohun Bose,
(former Defendants,) Appellants,

versus

Sonatun Ghose and Roopchand Ghose, as sons and heirs of the late Ramlochun Ghose, and as brothers and heirs of Shamachurn Ghose, deceased; Bissonath Ghose and Pearee Mohun Ghose, for self and guardian of Russickchunder, Prosnochunder, and Monmohun Ghose, minor sons of the late Joyechunder Ghose; Kisten Mohun Ghose, Rajmohun Ghose, and Kylosschunder Ghose, (former Plaintiffs,) Respondents.

SUIT laid at rupees 750, for possession of talook lands.

The plaintiffs alleged that, on the 27th of Chyite 1246, Ramlochun Ghose, whose heirs they are, lent the sum of rupees 381 to Ramnarain Bose, who then pledged or conditionally sold the four annas' share of lot Bulleadoho, No. 124, in pergunnah Hulliskhallee, and received from him a kutkubala. The money lent was not repaid, and in conformance with the petition of Ramlochun Ghose, (who is admitted by the parties to have been a co-proprietor of a separate six annas' share,) the notice according to Regulation XVII. of 1806 was issued to the borrower. Then Surroopchunder and Chandmohun put in petitions, stating their rights in the property said to have been thus conditionally sold. The money lent not having been repaid, the plaintiffs (Ramlochun having died) have brought this action as his heirs, against Ramnarain Bose, and they also sue Surroopchunder Bose and Chandmohun Bose, because they had come forward as claimants when the prescribed notice was issued in conformance with Ramlochun Ghose's petition. The plaintiffs mention, in their plaint, that on the said date of the kutkubala, the said borrower, Ramnarain Bose, had sold to Ramlochun Ghose a two annas' share in the talook, and an unconditional deed of sale, or kubala, was then executed for this (2 annas') portion of the talook.

In answer, Ramnarain Bose, denied ever having pledged or conditionally sold the 4 annas' share of the talook as alleged by the plaintiffs, he had no right to do so, for the proprietors of the share, the 4 annas, are Surroop and Chandmohun Bose. The defendant admits that he did make out a deed of unconditional sale, and sell his own 2 annas' share of the talook for 627 rupees to Ramlochun on the date mentioned; that is on the date which the bye-bil-wuffa bears. Then he was in great need, for having been surety for the stamp vender, Tarachand Ghose, at Jessore, he was held responsible for Government money embezzled by that person, and cast into jail. It was in jail that he effected the said sale; but though the deed was unconditional, it was verbally agreed between him and Ramlochun Ghose, that when the 627 rupees paid had been realised from the rents, he would restore the 2 annas' share to the defendants.

The defendant, Chandmohun, says that the 6 annas' share was bought in the name of Ramnarain, but with the common funds of Surroopchunder, of himself, and of Ramnarain: they are equally proprietors of a 2 annas' share, and the defendant, Ramnarain, had no right to alienate the 4 annas, as the plaintiffs say he did. This however is false, as will be apparent from the fact that, in 1246, he, Chandmohun, let his own share of 2 annas, in farm to one Hararanund Bose, for three years, and in that year had applied to have his name registered among the records of the zemeendaree, the wuqf mehal, of Syedpoor, which is under the management of the motowollee of the enambarree at Hooghly.

No answer was given by the defendant, Surroopchunder Bose.

Syed Keramut Allee, who was a defendant, in the lower court, stated in his answer that he had nothing to say to the transactions described by the other parties, and that he is merely sued because the land under litigation is situated in the wuqf mehal.

This case was decreed by the late sudder ameen on the 5th of December 1844. While pending in the court of that functionary, he had deputed the local ameen of Lubshaw, Surroopchunder Biswas, to make an enquiry and to report who were the partners in the 6 annas' share of the property mentioned in the plaint, and who of them were in actual possession. The ameen however did not complete this enquiry, but received from a person named Ramchunder Ghose, describing himself as a mook-tear of some of the plaintiffs (except Sonatun and Roopchand Ghose) a razeenamah, dated the 16th Assin 1251 B. S., stating that they had obtained $1\frac{1}{2}$ annas' share of the estate from Ramnarain Bose, and that they withdrew their claim to the remainder. Ramnarain Bose, the ameen represented, put in a saffeenamah in accordance with the razeenamah, and stated that a separate deed of sale for that share had been given by him to Ramlochun. The other two partners of Ramnarain Bose, Chand-

mohun and Surroopchunder Bose, were then also represented by the ameen to have filed an ekrar, agreeing to the terms in the razeenamah and saffeenamah. The ameen made no report, and the sudder ameen, regardless of those documents, filed before the ameen, decided the case in favor of the plaintiffs on its merits.

An appeal having been preferred by Ramnarain, Surroopchunder, and Chandmohun, the three defendants, it was referred from this court to that of the principal sudder ameen for trial; and as no enquiry had been made by the late sudder ameen as to whether the deeds of adjustment, which the ameen represented to have been filed before him, had really been put in by the parties, the principal sudder ameen remanded the case for re-trial with the view of that fact being ascertained.

Accordingly the sudder ameen named at the heading of this case again tried the case, and gave his opinion that the documents sent up by the ameen were fictitious. He decreed the case in conformance with the plaint.

Surroopchunder Bose and Chandmohun Bose have submitted a petition of appeal from this decision. They allege that they did not give any saffeenamah, and that the plaintiffs (except Sonatun Ghose who was confined in the Baraset criminal jail) colluded with the ameen, and with Ramnarain Bose, to have those documents filed. They repeat that they are still in possession of their 4 annas' share of the estate, and that the 2 annas' share of Chandmohun Bose had been let in farm by him for three years from 1246 B. S. to one Haranund Bose. The name of Chandmohun too had been sought to be registered in the zemeendar's serishtah. These appellants further urge that an ameen, who was sent out to enquire as to whether the defendants were in possession or not of their portions of the talook, had sought a bribe from them to report in their favor. They represented this in a petition to the sudder ameen at the time, who took no notice of their statement, nor would he receive a petition from them to take further evidence.

At the foot of the above two appellants' petition of appeal, Ramnarain Bose subscribes the above statements, and says that the plaintiffs' (respondents') statements are untrue, that only 197 rupees were due on account of the stamp vender's defalcation, which he paid from the money, rupees 627, paid to him for the 2 annas by Ramlochun Ghose; and where was the necessity of his raising more money as described by the plaintiffs on the very day that he had got the above sum from Ramlochun? The appellant urges that plaintiffs' witnesses are their dependants, and that one, named Gopeekisten Mitter, has intentionally been kept out of the way lest he would give evidence unfavorable to their statements.

This case was instituted for possession of a portion of a putnee talook named Bulleadoho, which plaintiffs (respondents) say was sold under a deed of conditional sale to their predecessor, Ramlo-

chun Ghose, by Ramnarain Bose, but this transaction is altogether denied by the defendants (appellants,) who, including Ramnarain, deny that he had any right to dispose of the property claimed, because it was the property of two only of the appellants (defendants,) Chandmohun Bose and Surroopchunder Bose. In the lower court the plaintiffs adduced six witnesses, to prove that the conditional sale had been effected and to prove the due execution of the deed of bye-bil-wuffa, which bears date the 27th of Chyete 1246, the identical date of the deed of unconditional sale of his 2 annas' share of the property by Ramnarain Bose, which is referred to at the conclusion of the plaint. The names of the witnesses are Kummuroodeen, Fuckerchand Doss, Sureef Ghazee, Oodyenarain Sein, Teeluk Sirdar, and Muddoosooden Mookerjee. The two first named witnesses say that they were attesting witnesses to the bye-bil-wuffa, which was written out, and the money paid at the sudder station of Jessore, by Gopeecant Mitter, Ramlochun Ghose's nyeb. These two witnesses say they were then travelling about the country in search of cows to buy. They state that they live close to each other, that they left home together; but Kummuroodeen says that they had been going about for three or four days previous to their arriving at Jessore, where they witnessed the deed—whereas Fuckerchand says that they had left home and arrived at Jessore on the same day. The next witness, Sureef Ghazee, says he also was an attesting witness of the bye-bil-wuffa. He states that he then heard it mentioned by Ramnarain Bose to Ramlochun Ghose, the lender of the money, in the course of conversation, that he had sold the 2 annas' share of his talook to Ramlochun previously; but the two witnesses, whose evidence preceded this man's, state that Ramlochun was not present when the bye-bil-wuffa was written, and the plaintiffs themselves admit this. Also with reference to this third witness's evidence, I have to remark that he is a witness to the first deed, that of unconditional sale of the 2 annas, which is mentioned in the plaint and admitted by Ramnarain, yet the witness says he only knew of this sale by hearing Ramnarain speak of it incidentally to Ramlochun Ghose, a person admitted not to have been present when the bye-bil-wuffa was written out. The witnesses, Oodyenarain Sein and Teeluk Sirdar, were not attesting witnesses to that document; they say merely that they heard from Ramnarain Bose that the transaction had been completed by him. In his evidence Muddoosooden Mookerjee says he was an attesting witness to the kubala. He says that he saw the money paid by Gopeecant Mitter to Surroopchunder Bose, one of the defendants (appellants,) whereas the other witnesses say the money was paid to Ramnarain Bose. The plaintiffs have filed a copy of a report of the ameen of the Jessore collectorate, dated the 17th of Maug 1244 B. S., regarding the

property described in the bye-bil-wuffa, and also that mentioned in the deed of sale, wherein it is stated that Ramnarain was the sole putnee proprietor of that portion of the talook Bulleadoho. With respect to this document there is nothing to show that Chandmohun and Surroopchunder Bose were aware of this report being made, and I do not consider that its contents can affect their present statements. The plaintiffs (respondents) have moreover filed a copy of a decision, wherein one Oomachurn Roy (an izardar under Ramlochun Ghose, in his separate 6 annas' portion of the talook) was a plaintiff in the court of the moonsiff of Lubshaw, wherein the moonsiff decreed that Ramnarain and Surroopchunder Bose (appellants here) were to pay rent to that person for theeka land held by them within the said 6 annas' share of Ramlochun. I am not aware of what advantage this decision is to the respondents.

On the defendants' (appellants') part there were examined in the lower court two witnesses, Goluk Podar and Susteeram Kahar, who depose that the property said to have been unconditionally sold belongs to Surroopchunder and to Chandmohun Bose; and that the 6 annas' share (which includes the 2 annas sold as stated in the plaint) had belonged to the three appellants. This appears to have been clearly deposed to in the beforementioned case, brought by Oomachurn Roy, by that person's witnesses, and not merely by the witnesses of Ramnarain. Copies of the depositions of those witnesses (Waris Khan and Soodaram Mitter) are filed by the appellants, and these witnesses had deposed therein that the 6 annas' share of the talook belonged jointly to the three appellants. Chandmohun, when the suit was brought by Oomachurn Roy, petitioned, on the 26th of Falgoun 1244, stating that the rights of all three partners were the same in the 6 annas' share of the talook of Bulleadoho, and his petition bears date nearly two years previous to the date of the bye-bil-wuffa, which is the cause of this action. Having called for the petition (and record connected with it) given with this bye-bil-wuffa in conformance with Section 8 of Regulation XVII. of 1806, I observe that the same statements which are now made by these appellants, and which were made in the petition referred to of Chandmohun, were set forth in their petitions of objections filed with that record. It is true that in the bye-bil-wuffa Ramnarain is made to have said that the entire 6 annas was his sole property, but this allegation of Ramnarain could only avail the plaintiffs (respondents) in the event of the deed being proved, whereas the deed is the reverse if proved. It is necessary to remark that the deed of unconditional sale of the 2 annas' share of the talook, (which Ramnarain has admitted) mentions that Ramnarain sold it in order that he may be enabled to discharge his debts. In the bye-bil-wuffa, written some hours after that kubala,

or deed of sale, it is stated that the conditional sale was effected in order that Ramnarain might have the means of discharging the money he was liable to pay to Government, in consequence of his being surety of a stamp vender who had defaulted. The evidence and the plaintiffs' own statements show that at the time the first deed was written, Ramnarain was in confinement on account of this liability. It appears to me natural that the first available sum would have been obtained and devoted to procure his release, and to be very improbable that his endeavour to raise money to free himself from prison would have been his last act instead of his first, especially when there is nothing to show that his creditors, except the Government, were pressing their demands. Under these considerations, I decree this appeal. Both parties deny that any adjustment took place when the ameen was deputed to make a local enquiry, and from the papers it is clear that no adjustment, authorised by the parties, did take place before that officer. He is represented to have died, at all events he does not now hold office. The moonsiff of Lubshaw, however, will report whether he is really dead. The sudder ameen will be called on in a separate roobukarree, to state why he did not, as appears from the petition presented by the defendants, make any enquiry regarding their allegation that the ameen had sought a bribe of rupees 300, to report in their favor.

THE 8TH APRIL 1848.

*Appeal from a decision passed by Mr. J. Weston, Sudder Moonsiff,
on the 19th of February 1848.*

Nusseemun Beebec, (former Plaintiff,) Appellant,

versus

Bussunttee Feringhee, Pyrun Bewah, and Mohotab Bewah, (former Defendants,) Respondents.

FOR 16 rupees, value of a silver hauslee, snatched from plaintiff's person.

The plaintiff sets forth that the defendants had assaulted her, and the two last named defendants, by order of Bussunttee, had forcibly taken her hauslee on the 1st of Joistee 1254. She complained in the foudjarree court, and the defendants were there fined; but as no restitution of her ornament was awarded, she has recourse to this action. In answer, the defendants pleaded that they never took the plaintiff's hauslee, that a quarrel and mutual assault did take place, and all parties were punished in the foudjarree court by fine.

The moonsiff did not credit the plaintiff's evidence, when he referred to the foudjarree papers and dismissed the claim.

In appeal, the plaintiff reiterates her statements, and prays for the value of her hauslee.

I see no reason to interfere with the moonsiff's decision. The foudjarree nuthees show that the parties mutually assaulted each other, that each party was fined, and that the allegation that the hauslee had been taken from the plaintiff (appellant) was not made good. I therefore reject this appeal.

THE 8TH APRIL 1848.

*Appeal from a decision passed by Hurrischunder Mitter, Acting
Moonsiff of Lubshaw, on the 28th of February 1848.*

Khôsaul Mundul, (former Defendant,) Appellant,

versus

Palun Bewah, widow of Namdar Khan, (former Plaintiff,)
Respondent.

FOR rupees 27, 4 annas, due on a bond, inclusive of interest.

The plaintiff stated that her husband had lent the defendant 17 rupees 8 annas on a bond, which the defendant gave on the 9th of Srabun 1249, and sues as the defendant will not pay the amount.

In answer, defendant denied having borrowed any money whatever, and stated that the plaintiff was instigated by one Sumeer Sanna, his enemy, to bring this suit.

The moonsiff heard plaintiff's evidence and decreed the case. The defendant failed to have his witnesses present in court, though warned to do so long previous to the date of the decision.

The defendant appeals, praying to have his witnesses heard; he states, among other things, that his witnesses were not brought up, because the moonsiff's seat was vacant for a long interval after he was warned to have his witnesses in attendance. As I perceive, on referring to the English office in this court, that the moonsiff who permanently holds the office left, on sick leave, on the 29th of January, and the acting moonsiff did not take charge for three weeks after, I think the defendant's plea reasonable, and admit this appeal. I return the case to the moonsiff to re-try.

THE 15TH APRIL 1848.

Original Suit.

Rajcoomarree Dossee, elder widow of the late Kistanund Biswas,
Plaintiff,

versus

Sreemuttee Bamasoondree Dossee, younger widow of deceased,
Ram Chunder Sircar, Promothonauth Deb, Dwarkanauth Ghose,
Bissonauth Biswas, Sumboonauth Biswas, Kassinauth Biswas,
and Chundernauth Biswas, Defendants.

FOR possession of the estate, real and personal, of the deceased Kistanund Biswas, claimed in conformance with an onoomuttee putter, or deed authorising the adoption of a son; suit laid at Company's rupees 2,89,167, 13 annas, 11 gundahs, 3 cowries.

Plaintiff stated that she is one of the widows of Kistanund Biswas, deceased, who, shortly previous to his death, had married the defendant, Bamasoondree Dossee. The deceased had executed a deed, an onoomuttee putter, (authorising plaintiff to adopt a son) on the 6th of Joiste 1252, and bequeathing to her possession all his estate (under conditions mentioned in the deed) from which a monthly allowance of 100 rupees was to be paid to Bamasoondree, whose marriage, the plaintiff states, with the deceased had been brought about only by the machinations of the defendant, Ram Chunder Sircar. In consequence of this deed she now sets up her claim to the property described at the heading of this decision.

The plaintiff states that in a case of appeal (regarding arrears of rent due by a tenant on her husband's zemindarree) in this court, she had applied to be admitted as the representative of her husband, who demised while the case was pending. After his death the defendant, Bamasoondree Dossee, came forward, who likewise claimed, in that case, to represent the deceased, alleging that no deed authorising adoption had been executed, and further stating that a will had been left by Kistanund, who had appointed Promothonauth Deb his executor. The plaintiff also states that when she made the application to be admitted as her deceased husband's representative, in the said appeal case, Promothonauth, the defendant, then put in his claim as executor constituted under the will. She sues Ram Chunder Sircar, because he is, she alleges, the person who has instigated Bamasoondree, the defendant, to set up her claim under the will; and the plaintiff adds that this person had acquired great influence over her husband, during his illness, when he embezzled and appropriated much of her husband's property, for which, she says, she will institute an action hereafter against Ram Chunder Sircar. The other defendants, Dwarkanauth Ghose, Bissonauth Biswas, Sumboonauth Biswas,

Kssinauth Biswas, and Chundernauth Biswas, are sued by the plaintiff, because they took occasion when she applied to be admitted as her husband's representative in the before-mentioned appeal case, to present petitions to the court, denying that any will, or any deed, authorising adoption, had been executed by Kistanund, and setting forth that they, after the death of the two widows of that person, are heirs to his estate. Dwarakanauth is the nephew, and the Biswases the uncle's sons of deceased. Plaintiff goes on to state that her application to be made the representative ("kaeem mokaum") of her husband, was so far complied with that she and Bamasoondree, (then a minor,) by her father, Tarnee Churn Ghose, were admitted to appear as such in the case mentioned by her; the minor's guardian was Tarneechurn Ghose. Previous to this proceeding of the civil court, the plaintiff had applied, she states, to the revenue authorities, praying that the estate of Kistanund Biswas might be taken under the protection of the Court of Wards, as he had become of impaired intellect, of which circumstance Ramchunder Sircar availed himself to plunder the estate.

Ramchunder Sircar, in his answer, alleged that the plaintiff's statements were not founded on fact, and stated that the deed filed by the plaintiff was a fabrication, and that it bore date during the period when the deceased had become of impaired intellect. The defendant states that if the deed, as alleged by plaintiff, had been executed by her husband, she would not have applied to the revenue authorities to take his estate under the Court of Wards. The evidence taken, when probate of the will of Kistanund was applied for, in the Supreme Court, will show that the statements regarding the onoomuttee putter, or deed of permission to adopt, are untrue. The defendant states that he will state in his rejoinder the circumstance under which the deceased left a will; and he enters into a statement of some length to show that he was a faithful servant of the deceased, as well as of his father, denying that he appropriated any of the effects of Kistanund Biswas.

Bamasoondree's father and guardian, Tarnee Churn Ghose, stated, in answer, that the deed, under which Rajcoomarree claims, never was executed: if so, it is urged, when probate of the will was applied for in the Supreme Court by Promothonauth Deb, the plaintiff would have appeared and stated the fact.

The plaintiff's name had frequently been attached to documents and receipts connected with the estate along with that of Bamasoondree, which would not have been the case if the plaintiff's claim had any foundation. The plaintiff's father, it is stated, has instigated her to get up the action. The defendant alleges that previous to the date of the onoomuttee putter, the deceased Kistanund was deranged in intellect, so as to render him incapable of dictating the

terms of such a document. The defendant states that there were many valuables and much property taken by the gooroo, Thakore Bhuttacharj, of the deceased, and by Calachand Bose, the father of Rajcoomarree, and that steps will hereafter be taken for their recovery.

Promothonauth Deb stated, in answer, that there was no real deed of the nature of the one put in and described by the plaintiff, ever executed by Kistanund Biswas, but that the deceased had executed the will which has been before referred to in other answers. The existence of this document (the will) was not known to the defendant, until he was informed of it by Ram Chunder Sircar, and after being so informed, though defendant was unwilling to undertake the duty, because of the troublesome accounts he would have to be involved in, the defendant consented to act as executor, and applied for probate in the Supreme Court where the original will was filed. The will, the defendant states, was found in a box, after Kistanund's death, in the presence of the solicitors of deceased and of plaintiff. Tarnee Churn Ghose had the will filed as *prochein amy* in the Supreme Court.

The answer of Dwarkanauth Ghose states that neither will or onoomuttee putter were ever executed by the deceased. With regard to the last mentioned document, he states that the plaintiff's application to bring the estate of deceased under the Court of Wards will show, if it is called for, that the deed did not exist. The genuineness of the will, which Bamasoondree puts in, was denied, defendant states, by him when probate was applied for in the Supreme Court.

The answer of the four Biswases is to the effect that they have no claim on the property left by Kistanund during the life time of his widows; they pray that their names may be struck out from among the defendants in this case, and state that the other defendant, Dwarkanauth Ghose, has sufficiently met the plaintiff's statements in his answer, which renders further statements from them unnecessary.

In reply to the answer of Ram Chunder Sircar, the plaintiff repeated her statement regarding the genuineness of the onoomuttee putter, and with respect to the documents mentioned by the defendant, as bearing the signature of both herself and Bamasoondree, she says such signature was attached without her knowledge, and only in order to defeat her claim under the onoomuttee putter. She states further that the due execution of this document was proved by the evidence taken when she applied to be admitted as the representative of her husband in the appeal case mentioned in her plaint. The plaintiff states that her husband was quite well enough, and sufficiently sound in intellect, to direct the terms of the deed, and also to attend to various other matters of

business when it was executed; in fact during the interval from the month of Chyte 1251 until Bhadoon 1252 he was perfectly *compos mentis*.

She next replied to the answer of Tarnee Churn Ghose, the guardian of Bamasoondree. The plaintiff stated that though a will was alleged to have been left by her husband, yet Promothonauth Deb would not follow up the application made for probate thereof, on account of his doubts of its genuineness, and in consequence Tarnee Churn filed his bill in equity. She again denies that her husband executed the will. It will be found she states that the stamp, on which the will is written, is endorsed as having been sold only two and a half months before his marriage with the defendant Bamasoondree. It is stated by the defendant that Messrs. Swinhoe and Hedger stumbled on the will, in a box, when taking an inventory of the deceased's effects in his house in Calcutta, though it is asserted that it was made in the presence of several respectable and wealthy persons! No mention of a will was made when the nazir of the collector's court was deputed to ascertain, on plaintiff's petition, who was plaintiff's husband's heir. Indeed the key of the said box was in the possession of Ram Chunder Sircar, and plaintiff contends that the will was fabricated after her husband's death and placed therein. The plaintiff states that the witnesses who subscribed to it are dependants of the defendants, living at a distance from where it was executed, and who are persons of doubtful reputation. Plaintiff denies ever having attached her name, as co-heiress with Bamasoondree, to any documents connected with her husband's estate, nor was she cognizant of any proceedings in the Supreme Court, which would render it requisite for her to state, in that court, that the onoomuttee putter had been left by her husband, who executed it in her name, because she is able to write and to manage the affairs of the zemindarree, preferring her to Bamasoondree, for those reasons, as well as because she had borne him a male child. It is not necessary to make more particular mention of the reply put in to the answer of Dwarkanauth Ghose, in which, as well as in the reply to Promothonauth Deb's answer, the plaintiff refers to her reply to Tarnee Churn Ghose. Her notice of the answers put in by the Biswases is very brief, and does not require any further reference in this place.

In his rejoinder Ram Chunder Sircar entered into an explanation of circumstances regarding the marriage of Kistanund with Bamasoondree, which I need not more particularly describe. With regard to the deed filed by the plaintiff, this defendant asserts, that on the date thereof, the plaintiff's husband was not in a condition, owing to illness, to execute it, or to understand the subject. Tarnee Churn Ghose, in his rejoinder, states that this case cannot be tried in this zillah when there is a suit pending in equity in the Supreme Court, on account of the will left by

Kistanund, who lived in Simlah, in Calcutta, and had property there, thus bringing the case regarding the will under the jurisdiction of Her Majesty's Court. The defendant repeats that Kistanund was in a state of mind which prevented his performing or understanding any business, and that the plaintiff was cognizant of the signature of the other widow, Bamasoondree, on the documents pertaining to the estate of the deceased.

JUDGMENT.

The plaintiff instituted this action in the court of the additional principal sudder ameen, whence it was called for, on the application of the defendant, Tarnee Churn Ghose, guardian of Bamasoondree, on the 31st of January last, in consequence of there having been filed in it, by the parties, a great number of documents in English, which language that functionary did not understand. The plaintiff sues for possession of the estate, real and personal, of her deceased husband, in virtue of a deed said to have been executed by him on the 6th of Joiste 1252, authorising her to adopt a son, and to assume proprietary management of the estate. This deed is alleged by the defendant, Bamasoondree, to be a fabrication; she is the other widow of the deceased, and she as well as the defendants, Ram Chunder Sircar and Promothonauth Deb, alleges that a will was executed on the 5th of Bysack 1251, whereby both widows were respectively authorised to adopt, and which constituted Promothonauth Deb, Kistanund's executor. The other defendants, Dwarkanath Ghose, Sumboonauth Biswas, Bissonauth Biswas, Kassinauth Biswas, and Chundernauth Biswas, state that neither the onoomuttee putter, or the will, were made by Kistanund Biswas, that after the demise of the two childless widows of that person, they, by law, are the inheritors of the deceased's estate. A suit in equity had been instituted in the Supreme Court, by Bamasoondree's father, to prove the will said to have been left by Kistanund Biswas; and, as the the present suit was instituted one day after in this zillah, the opinion of the Sudder Dewanny Adawlut was requested by me, whether, under Section 12, of Regulation III of 1793, I could proceed with the trial. The Sudder Dewanny Adawlut would not accord any opinion on the subject, and, after further consideration, I came to the decision that I might proceed with the trial of the case.

On the 21st of February last a proceeding was held by this court, admitting the defendant, Bamasoondree, to conduct her own case, she having attained majority. Her father, Tarnee Churn Ghose, as before remarked, had managed this case for her during minority.

To prove the execution of the onoomuttee putter (which was filed and read) or deed of permission to adopt, the plaintiff adduced

four witnesses. Three of these persons, Deenonauth Roy, Ruggoonauth Biswas, and Thakoredoss Turkpunchanun, are subscribing witnesses to the document; the fourth witness, Kalachand Chowdry, is described by the plaintiff, and by his own evidence, to have been present when the deed was written out and signed by Kistanund Biswas, though he was not a subscribing witness to it. The first three witnesses depose that the rough draft of the deed was written out by the witness, Deenonauth Roy, at Khurdoh, on the date it bears, in the bythuk khanna of Kistanund Biswas, and that Deenonauth, having by his dictation written the rough draft, gave it to him (Kistanund) who read it, expressed his approval, and desired the fair copy to be engrossed by Deenonauth, which was completed at about half past the third watch of the day,—when Kistanund Biswas, with the witness, Thakoredoss, the gooroo, or spiritual guide, of that person, took the deed into the women's apartments, where Kistanund delivered it to the plaintiff, Rajcoomarree. The witnesses say that many of the principal and confidential omlah (whom they mention by name) of Kistanund Biswas were, at that very date, residing at Khurdoh, quite near to Kistanund's own house, where the witnesses make out the deed to have been written. No intention whatever was expressed, as far as can be gathered from the evidence, to those omlah by Kistanund, of writing this important document, and those men do not appear to have been aware of its existence until on the day of, or after, the death of Kistanund. The evidence of the three witnesses, whom I have mentioned as subscribing witnesses, also proves that several of the supindas of the deceased were then living at Khurdoh, and at the village of Jagoolee, (which immediately adjoins,) yet not one of them received any intimation from Kistanund Biswas regarding the important deed he was about to execute, or any notice whatever that it had been drawn out and signed. These three subscribing witnesses do not appear to have been familiar acquaintances, or (excepting Thakoredoss) associates of Kistanund, for Deenonauth Roy was a subordinate mofussil officer, the dakhila novees, at one of Kistanund's estates, situated at the distance of three coss from Khurdoh. The second witness, Ruggoonauth Biswas, says that he generally resided at Mundulghaut, in zillah Hooghly, where he had a farm, but was, by chance, at Khurdoh, seeking employment at the time the deed was written. It appears to me improbable that a man of Kistanund's respectability and wealth would have selected either of those individuals to witness an onoomuttee putter, or any deed disposing of so much property. No reason has been assigned for the secrecy with which this document would appear to have been made out, or why the witnesses preserved silence regarding it during the life time, a period of six months, of Kistanund Biswas. No injunction to keep the matter a secret is mentioned by the witnesses,

and it is not likely, if the witnesses really had subscribed to the onoomuttee putter, that they would so carefully have abstained from all mention of it for so long a period. The witnesses say that when it was written out Kistanund was suffering from palpitation of the heart, but it does not at all appear from their evidence that he was in any imminent danger on the date of the onoomuttee putter, which would have rendered its immediate and sudden preparation necessary, without awaiting the presence of Kistanund's sapindas and chief omlah. Neither does the fourth witness, Kalachand Chowdry, appear, in my opinion, to have witnessed this deed at all. He says the draft was given into the hands of Kistanund Biswas, who altered the terms of it in several places with his own hand, and then returned it to Deenonauth Roy, to copy fair. This is at variance with the statements of the three others; and this witness, Kalachand, also says that, though he did not go away from the bythuk khanna until after the fourth watch of the day on which the onoomuttee putter was written, he did not see what became of it, while it is to be borne in mind that the other three witnesses say that, before that time, they saw it taken into the apartment of the females by Kistanund. Although it appears from the depositions of some of the witnesses I have referred to that the onoomuttee putter was completed and made over to the plaintiff (according to the evidence of three of them) on the 6th of Joiste 1252, corresponding with the 18th of May 1845, no intimation either to the relations, or to the principal omlah of Kistanund, or to the public authorities, was given regarding this important deed, until the plaintiff presented a petition to the collector, on the 7th of Aughun 1252, corresponding with the 21st of November 1845, (the day of Kistanund Biswas's death,) or more than six months after the date of the document. It appears to me incredible that the fact of the existence of a deed involving so much property, could have remained so long unknown, and that the stray or chance witnesses who say they saw it made out, should so long have remained silent regarding it. It seems to me very improbable that Kistanund would have written such a deed as the plaintiff describes, without consulting or calling in Ram Chunder Sircar, the defendant, who, plaintiff states in her plaint, had obtained a great ascendancy over him. It is not likely that plaintiff, or her advisers and relations, were ignorant of the great advantage which they might have derived, by Act XIX. of 1843, from having the deed registered immediately after it was completed, had it really been executed. In addition to the evidence of the four witnesses regarding the onoomuttee putter, which I have particularly adverted to, the plaintiff had the deposition of five others taken. These witnesses were Ramchand Chuckerbuttee, Muddoosooden Tewarry, Baicharam Doss, Bhujohurree Roy, and Budden Doss, who depose that Kistanund Biswas

was in a state of mental and bodily health, which rendered him quite capable of attending to his affairs up to the month of Kartick 1252, and that he did manage his affairs and his estate up to that time. With the intent also of proving that Kistanund was in that state, the plaintiff has filed copies of several documents. Eight of the originals of these documents are either reports from the police, or the depositions of certain of the omlah, or gomash-tahs of Kistanund taken in the foudjarree court, tending to show that Kistanund held the management of his property in his own hands. Besides these eight documents, the plaintiff has filed a copy of a roobukarree, held by the collector of revenue on the 2d of April 1846, showing that a complaint had been made to him on the 21st of November 1845; that the party of Ramchunder Sircar were making away with the property of Kistanund Biswas, he being, at that time, *moribund*. The plaintiff has also filed a copy of the collector's nazir's report, dated the 4th of December 1845, stating that Kistanund Biswas's heirs were his two widows. Finally, I have to mention the roobukarree of this court (a copy of which the plaintiff has also filed) dated the 27th of March 1846, whereby the plaintiff was admitted to be Kistanund's representative, in the case mentioned in her plaint, along with the other widow, Bamasoondree, the defendant. The last mentioned document is the only one which refers to the onoomuttee putter; and as it appears from this roobukarree that no mention of that deed was made in this court, or any where, until the day of Kistanund's death, long after that deed was said to have been written out, I do not think this proceeding can be of any benefit to the plaintiff. In it, moreover, this court expressly refused to pass any opinion regarding the onoomuttee putter. A copy of the will mentioned in the answer has been filed in this case, wherein Promothonauth Deb was appointed executor, and authority thereby given to the widows respectively to adopt a son; the will making other arrangements connected with the deceased's estate. To prove this will Kistenmohun Mitter gave evidence in this court. Messrs. T. B. Swinhoe and W. N. Hedger also gave evidence here, regarding its having been found in the house of Kistanund Biswas in Calcutta. Copies of the evidence of Raj Chunder Sein, the same Kistenmohun Mitter, Tarachand Bose, and Kalachand Bose, which was taken in the Supreme Court when Promothonauth applied for probate of the will, (which was not however granted,) are also filed by the defendant Bamasoondree. But I deem it here unnecessary to go into the question regarding the validity of the will. I have given my opinion at length regarding the bad and insufficient evidence adduced by the plaintiff, which, as well as the long silence observed by her, and by those who allege that they were witnesses of the onoomuttee putter, leads me to discredit her statement that any such deed was executed by Kistanund Biswas, and I accordingly dismiss this case.

THE 18TH APRIL 1848.

Appeal from a decision passed by Roy Hurro Chunder Ghose, Principal Sudder Ameen, on the 17th March 1847.

Chitra Dossee and Kaooree Dossee, (former Defendants,) Appellants,

versus

Panchee Dossee, (former Plaintiff *in formâ pauperis*,) Respondent.

FOR possession of land with wasilaat, and value of jewels and effects : suit laid at rupees 1,577, 9 annas, 5 gundahs.

The plaintiff instituted this action stating that 2 beegahs, 17 kottas of land had been left her by her late husband, Bungshee Budden Ghose, at his death ; and she had purchased 1 beegah and a house thereon, with a portion (4 annas) of a tank from the defendant, Chitra. She also possessed certain documents, ornaments, and utensils of precious metals. After her husband's death, she resided with Chitra and Kaooree Dossee, her husband's sisters, for a time ; and, eventually, she and Chitra undertook a pilgrimage to Gya, leaving the property mentioned with Kaooree. Returning from thence, those two females have retained possession of her landed property and her valuable effects at the instigation of Raj Chunder Ghose, Kaooree's son-in-law. She accordingly sues to recover possession of the same.

Raj Chunder denied that he had dispossessed the plaintiff of any property ; but she had conditionally sold the said 1 beegah, house, and her portion of the tank in consideration of a loan of rupees 200 being made to her by him, Raj Chunder, which conditional sale formed the grounds of action against plaintiff in another case.

The answer of Kaooree and Chitra is that they never got possession of any of plaintiff's property, who still has all she mentions in her plaint. They support Raj Chunder's statement in their answer.

The principal sudder ameen decreed the case for the said land, house, and portion of the tank. He did not consider the deposit of the other articles mentioned by the plaintiff, to have been sufficiently proved. He considered it just to order Kaooree and Chitra to make good the *mesne* profits realized from the estate, as it was proved they had dispossessed the plaintiff from her property ; and he held all three defendants responsible for the costs, as he was of opinion that they had all three colluded in depriving the plaintiff of her rights.

An appeal is preferred by the defendants, Kaooree and Chitra, who state that an examination of the evidence will show that their statements were proved in the lower court ; and they urge that if plaintiff's statements were true, she would also have complained to recover the documents she says she put in possession. She

made no complaint whatever, appellants say, regarding her being dispossessed in the foudjarree court. The plaintiff (respondent,) in answer, says that she could not include the documents in her plaint, as it is illegal to institute suits *in forma pauperis* for deeds; and as to not complaining in the foudjarree court, she says she is a female quite unaccustomed to the rules of the courts. She says that after the case had been decided in the lower court, attachment was issued to recover costs; certain property of Chitra and Kaooree was attached for that purpose, in order to have it subsequently sold, but Raj Chunder Ghose came forward and had it released, by depositing fees in lieu of costs. This will show that he is the person who has really got up this case.

The plaintiff instituted this case to recover possession of land, &c., which she said the defendants had ousted her from. The defendants deny having effected any dispossession; and Raj Chunder Ghose alleges that one beegah, with the plaintiff's dwelling, and her share of a tank, were conditionally sold to him. He states that he has sued for possession thereof, under a deed of bye-bil-wuffa given for that property, in a separate case. In deciding this case, it is necessary to take into consideration the evidence of this bye-bil-wuffa alleged to have been given to Raj Chunder Ghose, which evidence was given in the succeeding case. The dispossession from the land, tank, and house, is supported by the evidence of Panchee's (the plaintiff respondent) witnesses Deelloo, Sheik Kyrattee, Doorga Churn Mitter, and Seeromunnee Mitter. Chitra and Kaooree, the appellants, had brought in only two witnesses, who merely deny that the plaintiff (respondent) Panchee, ever was ousted from possession of her property. The defendant, Raj Chunder Ghose, in a separate (the next) case, under the bye-bil-wuffa, adduced four witnesses to prove that deed. This evidence I do not credit. Casseenaauth Ghose, the first witness, says he goes by the name of Casseenaauth Roy as well; he says he signed the bye-bil-wuffa as a witness, and that he can write very imperfectly; in fact that he is merely able to write his name in a rough manner. Yet his signature to the deed is a clear and well written one, and is quite different from the witness's signature to his deposition. The next witness is Radanauth Mistree: he appears, from Casseenaauth's evidence, to have been present when the deed was drawn out and the money paid; nevertheless in his evidence he says the transaction did not take place before him. The third witness, Koocheel Roy, says that he was a subscribing witness; but it does not satisfactorily appear why this witness came to Raj Chunder Ghose's house (where the deed is said to have been written) a distance of two coss from the witness's residence. The fourth witness, Sreemunt, was not a subscribing witness, and says

that he saw no money paid, as alleged by Raj Chunder, to Panchee, the plaintiff (respondent.) The writer of the deed has not been produced; and of six witnesses whose names are attached to it, only two have given evidence. No mention why the others did not come in has been made. On referring to a copy of the petition of Raj Chunder Ghose filed by the plaintiff, (Panchee) it appears he did, himself, deposit the fees referred to in the respondent's (Panchee's) answer to the petition of appeal. It appears from this act which he had recourse to, to obtain the release of Chitra's house from attachment previous to sale for the recovery of costs, that he is the person interested in keeping the respondent out of her property. From this evidence I am of opinion, that Panchee was unjustly deprived of her ground, house, and portion of the tank, which the principal sudder ameen decreed to her; and that the story got up by Raj Chunder Ghose, that plaintiff had conditionally sold her house, portion of the tank, and one beegah of the ground she claims, to him, is unsupported by proof. The plea of the appellants, that it was necessary for the plaintiff to have sued for the documents which she says were taken away from her, is not, in my opinion, any reason for not considering and deciding her suit. She could not have sued for those deeds *in formâ pauperis*; and it would be unjust to prevent her recovering the other property as a pauper plaintiff, when she is barred from suing for her documents in the only mode she could afford. Under these considerations I dismiss this appeal.

THE 18TH APRIL 1848.

Appeal from a decision passed by Roy Hurro Chunder Ghose, Principal Sudder Ameen, on the 17th of March 1847.

Raj Chunder Ghose, (former Plaintiff,) Appellant,

versus

Panchee Dossee, (former Defendant,) Respondent.

FOR land claimed under a bye-bil-wuffa, or deed of conditional sale, valued at 575 rupees.

This is the case referred to in Rajchunder's answer, mentioned in the preceding number. The principal sudder ameen dismissed the case, as he did not consider that the conditional sale described by the plaintiff (appellant) was proved. I need not go more particularly into this appeal. In the preceding number I have given my opinion that the evidence of the plaintiff's (appellant's) witnesses, Cassee Mitter, Radanath Mistree, Koocheel Roy, and Sreemunt Mistree, brought forward to prove the deed of conditional sale, or bye-bil-wuffa, is insufficient; and I dismiss this case also.

THE 19TH APRIL 1848.

*Appeal from a decision passed by Moolvee Myenoodeen Sufdar,
Additional Principal Sudder Ameen, on the 6th of April 1847.*

Ram Chunder Baboo, Tara Chand Baboo, and Luckeenarain Baboo,
(former Defendants,) Appellants,

versus

Tarapersaud Roy Chowdry, (former Plaintiff,) and Doorgapersaud
Roy Chowdry, (former Defendant,) Respondents.

SUIT laid at Company's rupees 796, 9 annas, 15 gundahs, on account of money laid out for the service of idols.

The plaintiff instituted this suit alleging that he and Doorgapersaud have been put to all the expenses connected with the worship of the idols in their thakoor-barree, at their family residence at Khoordgong, in pergunnah Mooragatcha. The defendants, plaintiff's partners, (excepting Doorgapersaud Roy Chowdry) have paid nothing towards the expenses of the worship of the idols, and in consequence he sues them for the sum they ought to have expended on that account, which he has actually disbursed in the deb-seba since 23d Pose 1245 up to the 30th of Pose 1252, the date of plaint. The plaintiff alleges that certain lakeraj land in Puddo Pookreeah, and other villages in the said pergunnah, was set apart for the deb-seba expenses in their thakoor-barree, the rents of which should have been devoted to that purpose. The defendants, the co-lakerajdars of the plaintiff in that land, avail themselves of the profits of the said debooter, but neglect to expend those profits in the service of the idols.

In answer the defendants (save Doorgapersaud Roy Chowdry who did not answer) say that they did regularly contribute their proper share of the expense. But they urge, even if they had not so contributed, it is not admissible that Tarapersaud, the plaintiff, should make this demand from them. If having neglected to contribute a portion of the expenses on account of the deb-seba, they, by so doing, have committed a sin; but it was not requisite that Tarapersaud Roy should make any expenditure if they, the defendants, failed in their religious duty.

The additional principal sudder ameen decreed the case for rupees 796, 9 annas, 15 gundahs, which sum he considered was proved even from the documents put in by the defendants to have been the amount expended by the plaintiff. The additional principal sudder ameen spun out his decision considerably, and gave twelve reasons at length for the decision. But he omitted any sufficient mention of the bywustah which he took in this case from the pundit. To that officer he put the question, whether, if one partner in a debooter tenure neglected to apply his portion of the profits to the service and expenses connected with the deb-seba,

could another partner recover from the first mentioned partner the expenses laid out on account of the deb-seba by him.

The defendants (except Doorgapersaud Roy) appeal from this decision. They repeat they never had discontinued making the requisite deb-seba expenses; and they submit that, even if they had, the plaintiff was not entitled to recover any expenses laid out on that account by him. The bywustah of the pundit called for by the lower court, will show that this claim is contrary to Hindoo law. The plaintiff (respondent) filed an answer to this petition of appeal, wherein he again asserts that the defendants never did lay out any thing on account of deb-seba expenses connected with their thakoor-barree.

The plaintiff instituted this action, alleging that the defendants (except Doorgapersaud Roy Chowdry), his partners, did not lay out any expenses connected with the service or worship of idols in their common thakoor-barree, though certain debooter property was set apart in order to admit of all the partners defraying those expenses. The plaint further stated, that the plaintiff expended rupees 2,984, 10 annas, 16 gundahs, on account of the deb-seba, which the defendants ought to have laid out in that service: now plaintiff claims to be reimbursed. The defendants (appellants) say they never have ceased to make all proper expenditure on account of the deb-seba; and that, even if they had not done so, the plaintiff could not legally obtain any money he had laid out on that account from them. In this case I cannot concur with the lower court. There a bywustah was called for from the pundit, who clearly expounded the law to be, that if a partner did not contribute to the expenses of the deb-seba, his co-partner could *not* recover money laid out on that account by him from the former; and I do not think that the case should have been decided contrary to this exposition. It is true, the pundit states, that a partner, so ceasing to contribute to such expenditure, cannot retain possession of debooter land, the profits of which have been set apart for the deb-seba; and the pundit laid down that, in the event of a partner having ceased to contribute his share of the expenses for the deb-seba, cannot again be permitted, when he wishes to join in the expenditure, to do so, until he has made good to his co-partner any sum that person may have laid out for him on that account. The pleaders of the plaintiff (respondent) urge, that these two portions of the pundit's bywustah support the claim made by their client. But in this exposition of the pundit, all I have to consider is the portion of it which I have first referred to. The rest of the answer does not apply to this case; for the land is not claimed, nor does the plaint, or the answer either, admit that the defendants had first of all ceased to make expenditure on account of the deb-seba, and then began, or expressed a desire to do so, as the pundit contemplates in

his bywustah. Were I to decide in the plaintiff's favor, in consequence of these parts of the pundit's bywustah, I should be taking cognizance of matters not set forth in the pleadings. I therefore decree this case; the claim being declared inadmissible under the Hindoo law.

THE 19TH APRIL 1848.

Appeal from a decision passed by Moolvee Myenoodeen Sufdar, Additional Principal Sudder Ameen, on the 6th of April 1847.

Tarapersaud Roy Chowdry, (former Plaintiff,) Appellant,
versus

Ramchunder Baboo, Luckeenarain Baboo, Tarachand Baboo, and Doorgapersaud Roy Chowdry, (former Defendants,) Respondents.

Suit laid at Company's rupees 2,984, 10 annas, 16 gundahs, on account of money laid out for the service of idols.

In this case the appellant was plaintiff (respondent) in the appeal described in the preceding number. He appeals from the lower court's decision awarding him only rupees 796, 9 annas, 15 gundahs, instead of the sum at which he laid his suit, and prays that the difference may be awarded to him. I need not enter into the case further, because, in the foregoing number, I have given my opinion that the plaintiff ought to get nothing at all. I therefore dismiss this case.

THE 22D APRIL 1848.

Appeal from a decision passed by Roy Hurrochunder Ghose, Principal Sudder Ameen, on the 8th of April 1847.

Petumber Dutt and Ram Coomar Dutt, (former Defendants,) Appellants,

versus

Chundermunnee Dossee, (former Plaintiff,) Respondent.

Suit laid at Company's rupees 4,120, 6 annas, 8 gundahs, to obtain possession of land, buildings, and tank, &c.

This case was instituted by the plaintiff, who stated that her husband, Rajeeblochun Ghose, was employed as regimental writer in one of the regiments which formed part of the expedition to Cabul, where her husband was killed. Plaintiff had remained at Agra during his absence in Cabul; but, on his death, her husband's father, Rammohun Ghose, left his residence at Ballee to proceed to Agra to conduct her back from Agra. He confided her husband's dwelling house, with 1 beegah, 8 cottahs of birmooter land and tank to the charge of Petumber Dutt, the defendant, with

certain valuable ornaments, effects, and documents, particularised in a "zimmahnamah," in the year 1250. These articles and property were purchased with her husband's money. Her father-in-law, Rammohun, died on his journey to Agra; and now the plaintiff having come back from Agra cannot obtain restitution of her property. She states that a case according to Act IV. of 1840, for this property, had been decided against her; therein Neelmunnee Sircar, the alleged occupying tenant on the property, was plaintiff. She therefore sues Petumber Dutt, as well as Ram Coomar Dutt, his brother, who has aided him to keep her out of possession. Neelmunnee is made a defendant because he is said to be a ryot to whom Petumber has let the house and ground; and the others, Nubkisten Sircar, Kallee Churn Ghose, and Rammunnee Dossee, are made defendants, because plaintiff alleges they also have aided to keep her out of possession. Rajeeblochun Mookerjee is sued because he was the former owner of the property, from whom the plaintiff's father-in-law had bought the house and ground for her husband.

Petumber and Ram Coomar Dutt reply in substance, that, first of all, on the 11th of Falgoun 1249, the plaintiff's father-in-law, Rammohun Ghose, had conditionally sold, under a deed of bye-bilwuffa, the house, land, and tank, on condition of a loan of 301 rupees being made to him, which was to be repaid within one year. Subsequently, they say, that on the 17th of Bhadoon 1250, an unconditional deed of sale was made out and given to Petumber, in consideration of rupees 998 being paid for it; and they say the property was not the plaintiff's husband's, but her father-in-law's own, from whom they obtained the original title deeds connected with the property.

The principal sudder ameen decreed the case in plaintiff's favor, so far that he awarded her the house, ground, hereditary documents and tank. He was of opinion that the witnesses to the deed of sale gave contradictory evidence; and remarked that some of them had been unable satisfactorily to account for having come a long distance from their homes to subscribe as witnesses to the kubala, or deed of sale. In his decision the principal sudder ameen observes that there was not sufficient proof of the amount of wasilaat, or mesne profits, accruing from the estate, to authorise him awarding any thing to plaintiff on that account. Neither in his opinion was it proved what ornaments, or effects, had been entrusted to the defendant, Petumber Dutt. The stamped paper on which the kubala filed by that person was engrossed having been sold several years previous to the date of the deed, was an additional reason for the principal sudder ameen considering that document to be fictitious.

In appeal the defendants, Petumber and Ramcoomar, submit that the first matter for the lower court to enquire into was whether

the plaintiff's father-in-law had left the property, mentioned in her plaint, in the defendants' charge, under the circumstances stated; whereas this enquiry does not appear from the principal sudder ameen's decision to have been entered into, the proof called for in the lower court having been whether the deed of sale by Ram-mohun Ghose, in 1250, was duly executed or not. Appellants submit that the plaintiff (respondent) filed a zimmahnamah, or deed acknowledging the charge of the property; but the evidence did not prove that document, or that any property had been entrusted by the father-in-law of the plaintiff to the defendant, Petumber. The appellants also state that the evidence they brought forward supported their statement regarding the sale of the property to Petumber. If further evidence was requisite in the principal sudder ameen's opinion, the appellants say, the lower court ought to have caused the attendance of those witnesses whose deposition defendants (appellants) solemnly affirmed was requisite in this case, and for whose attendance warrants were issued. Appellants pray that the remaining witnesses may be called in. The appellants say that the father-in-law of plaintiff (respondent) was not, as she alleges, on his way to bring her from Agra when he died; but he had departed to take up his abode for the rest of his life in the holy city of Benares, being overcome with grief by the death of his son, whose first wife had deviated from the paths of chastity, when he had married the plaintiff; who, however, the appellants assert, had formed another connexion after her husband's death.

In answer to the above, the plaintiff (respondent) stated that she never formed any other connexion after her husband's death; and alleges that this statement is false and scandalous, being made only with a view to bring her character into disrepute, for which the appellants will receive due punishment, doubtless, from this court. She wrote to her father-in-law, she says, after that event, who, in consequence, was proceeding to Agra to bring her down to her residence. And she says, after hearing of her father-in-law's death on his journey, she sent down a power of attorney, which was duly attested and drawn out at Agra, appointing one Bungshee Buddun Dutt to look after the property left by her husband. In fact the respondent says, that, except herself, there is no heir to her father-in-law; and even if the property had not been her husband's, but her father-in-law's, she is entitled to succeed to it. As to the witnesses who have not been heard, according to the petition of appeal, in the lower court, the respondent says that one of them is Neel-munnee Sircar, the defendant, who cannot be a witness; the other Kallee Churn Ghose, had given evidence in the foudarree court regarding the kubala, and a copy of that deposition is filed and is sufficient in this case.

Finally, the respondent prays that the decision of the lower court may be amended in her favor according to Construction No. 868, and all the property mentioned in the plaint awarded her.

This case was instituted to obtain possession of a house and land, with certain effects, from the defendants (appellants.) The plaintiff also seeks for the reversal of a case decided, regarding the property, under Act IV. of 1840, whereby the defendant, Neelmunnee Sircar, had been put in possession of it. The defendants (appellants) deny that plaintiff has any right to the property, and say that her father-in-law sold it to them in the year 1250 B. S. To prove the zimmahnamah mentioned by the plaintiff (respondent,) Petumber Ghose, Thakoredoss Ghose and Rajnarain Dutt gave evidence on the plaintiff's side; these witnesses say they were subscribing witnesses to that instrument. Petumber says he retained charge of the zimmahnamah, and gave it to the plaintiff (respondent,) on her return from Agra. Thakoredoss says the same; and Rajnarain says he was the writer of the document. The two first witnesses appear to have very frequently given evidence in the courts; and, with respect to the evidence of the three, I do not credit their statements that they saw the zimmahnamah drawn out. If it had been, I am of opinion this document would have made particular mention of the deeds said to have been entrusted to the defendant (appellant,) Petumber Dutt, and that intimation of its having been drawn out and entrusted to Petumber would have been given to the plaintiff at Agra. This she does not state was given; though from her sending down the mooktyarnamah from thence, it is clear she had intimation regarding the house and ground being hers. Besides this, the mooktyarnamah makes no mention of the various articles and documents said to have been entrusted to the keeping of the defendant (appellant); and I am of opinion, if the zimmahnamah had been executed, especial mention of the person in whose charge they had been placed would have been made in the mooktyarnamah, which refers to the plaintiff's house and land as having been left by her husband, and which instrument bears date four months after the zimmahnamah. Four witnesses, Muddoosooden Peramanic, Ram Tunnoo Ghose, Baicha Ram Ghose, and Rutten Roy, deposed on the plaintiff's (respondent's) behalf, stating that her husband had built the house on the ground which he had purchased with his own money. These witnesses also say that after her, plaintiff's, return from Agra, she had possession of the house and ground, which she retained until the foudardree court ordered her to give up that possession. I deem it unnecessary to refer, more particularly, to a copy of a decision filed by the plaintiff, to show that her father-in-law was confined by order of the court of requests at Barrackpore on the date of the

kubala on which the defendants found their claim, as that decision is not authenticated by the signature of any public officer.

On the part of the appellants (defendants) in the lower court three witnesses, Goluck Hathee, Goburdhun Roy and Surroop Chowkeedar were examined, with a view of proving the kubala, or deed of sale, filed by the defendants (appellants) on which they found their claim to the property under litigation, and which they allege was given by Rammohun Ghose, the plaintiff's father-in-law. These witnesses say that they saw the sum of rupees 998 paid by the defendant, Petumber, to Rammohun, and that the deed of sale was written out and signed accordingly. The witnesses state however a circumstance which is at variance with the defendants' (appellants') statement and with the contents of the kubala. They say that rupees 319 were returned by Rammohun, on account of the kut-kubala referred to in the defendants' answer. Though these witnesses speak positively as to the date the deed of sale was written on, yet the two first named individuals, on being cross-examined, were unable even to mention what year the current year was, or which was the year two or three years ago. Those two witnesses say nothing at all regarding an account of the sum due to Petumber, (on account of the loan under the said kut-kubala) having been made out when the deed of sale was written. But the third witness, Surroop, says that such an account was then made out. I have also to remark that this witness, Surroop Chowkeedar, supports the statements of the four last named witnesses of the plaintiff (respondent), that after her return from Agra she got possession of her house and ground and resided therein. If her father-in-law had, as the appellants would make out, sold the property, how could she possibly have got possession and resided therein? The appellants pray that other witnesses on their behalf, whom they named in the lower court, may be called. Their pleaders submit that one of these witnesses, Neelmunnee Sircar, has needlessly been made a defendant in this case, in order to prevent his giving evidence regarding the deed of sale of which he is a subscribing witness; and they urge that the case of Ramlo-chun Goho *versus* Gooroopersaud Goho and others, (decided by the Sudder Dewanny Adawlut on the 11th of August 1847,) will show that the plaintiffs should not have made Neelmunnee a defendant. With respect to this person, Neelmunnee Sircar, and to the decision quoted, I have to remark that he is stated by the defendants (appellants) to claim to be the occupying tenant on the property. He was, moreover, the plaintiff in the case tried under Act IV. of 1840, in the foudarree court, *versus* this same Chundermunnee Dossee; and I am at a loss to perceive how the plaintiff could now avoid making him a defendant. The precedent quoted cannot apply when Neelmunnee has been made a defendant through necessity, and not with a fraudulent intent. The

other witness whom the defendants (appellants) seek to have called to give evidence, he being a subscribing witness to the deed of sale filed by them, is Kalleechurn Ghose. I deem it unnecessary to issue process for his attendance, for a copy of the evidence he gave in the said case, under Act IV. of 1840, is filed with the present nuthee; and, on hearing it, I can find nothing which would induce me to credit that the deed of sale was executed, and to prove which the defendants have besides only the bad evidence of the witnesses I have named. It seems to me immaterial, and unnecessary to say in this decision, whether the property claimed in this case was bought by the husband, Rajeeblochun Ghose, or by the father-in-law, Rammohun Ghose, of the plaintiff. Both those individuals are dead, and the plaintiff is heir to their estates. Under these considerations it seems to me that the defendants having seen the plaintiff bereft of the protection of her husband and of her father-in-law, by their death, have conspired to deprive her of her property. I do not consider that the evidence on the side of the plaintiff (respondent) is sufficient to authorise any amendment being made in the lower court's decision in her favor, but that there is still less reason to reverse it in favor of the appellants. I therefore dismiss this appeal.

THE 22D APRIL 1848.

Appeal from a decision passed by Mr. J. Weston, Sudder Moonsiff, on the 26th of February 1848.

Ramchand Sadookhan, (former Defendant,) Appellant,

versus

Hurrochunder Koondoo and Ramcoomar Koondoo, (former Plaintiffs,) Respondents.

FOR rupees 119-10-5-3, balance of account.

The plaintiffs instituted this action to recover the above sum from the defendant, alleging that he owed it to Mirtunjoy Koon-doo, uncle of Hurrochunder, and to Muddoosooden, cousin of Ramcoomar, who carried on trade together. They had sold defendant oil and mustard seed to that value. The mahajuns are dead; and now their heirs and successors are the plaintiffs. The defendant alleged that he had paid 100 rupees of the debt to the gomastah of the deceased mahajuns, and the rest was remitted. He denies that the plaintiffs are the true heirs of the deceased merchants.

The moonsiff decreed the case, having heard the plaintiffs' witnesses' evidence only. He states, in his decision, the defendant

failed to cause the attendance of his witnesses, who were subpœnaed through the sheriff of Calcutta.

In appeal, the defendant submits, among other things, that he was ill, and therefore could not follow up the process to cause the attendance of his witnesses.

I remark in this case that the moonsiff decided it on the 26th of February last, three days after the return of the subpœna from the sheriff's office; a little further delay might have enabled the defendant to show sufficient cause for his not having had the subpœnas served on his witnesses. Considering the large sum claimed, as well as the nature of the answer filed by the defendant, I deem it just to return this case for retrial, in order that the defendant may have an opportunity of producing witnesses.

THE 22D APRIL 1848.

Appeal from a decision passed by Mahomed Ruffa, Moonsiff of Bishenpoor, on the 28th of February 1848.

Raj Chunder Mirda, (former Plaintiff,) Appellant,

versus

Ramdhun Gyne and Manick Gyne, (former Defendants,) Respondents.

FOR rupees 31-7-14-2-2, balance due on a bond with interest.

This case was instituted to recover the debt abovementioned, which the defendants denied owing. The moonsiff, while trying this case, took a petition from the defendants, wherein they stated that if the plaintiff would depose on oath that the debt was a just one, they would abide by what he said. The moonsiff on this called up the plaintiff who was in court, but he declined to make the required affirmation. Accordingly the moonsiff who had taken the evidence of one witness of the plaintiff dismissed the case; observing that were the claim a just one, the plaintiff would have made affirmation that it was so.

An appeal is preferred from this decision, into which I need not further enter. Section 28, of Regulation XXIII. of 1814, admits of a moonsiff examining into the truth of a claim by the oaths of the parties, if they mutually consent to such a course. Here no mutual consent was accorded. The plaintiff declined to accede to the defendants' proposition. I therefore return the case to the moonsiff to try. His decision is highly unjust and illegal. The moonsiff is hereby informed that this case will form the subject of an immediate report to the Sudder Dewanny Adawlut.

THE 24TH APRIL 1848.

Appeal from a decision passed by Mahomed Ruffa, Moonsiff of Bishenpoor, on the 26th of February 1848.

Durpnarain Ghurrammee and Muddoosooden Ghurrammee,
(former Defendants,) Appellants,

versus

Seebnarain Haldar, (former Plaintiff,) Respondent.

To recover rupees 23-8-0, due on a bond.

This case was instituted by the plaintiff, who alleged that the two defendants borrowed 21 rupees on a bond dated the 6th of Joiste 1253, which, with the interest due, has not been liquidated. The defendants denied that they owed any thing to plaintiff. They state that they were not at the plaintiff's village at Hurrindanga, where the plaintiff says the bond was given on the above date, but were employed in the Government dawk boat at Kedgerree. The defendants add, that on that date the plaintiff was not more than ten years of age.

The moonsiff heard the evidence of the plaintiff's witnesses only. He remarked that the appearance of the plaintiff showed him to be nineteen years of age, and he decreed the case,—the defendants having failed to bring forward their witnesses.

The defendants appeal. They repeat that the age of the plaintiff was only ten years when the bond was written, and submitted that such a transaction by a minor is inadmissible and incredible. They allege that their pleader was in fault in not having their witnesses in attendance; for, they say, they paid him the expenses incident on the issue of the subpoenas for their witnesses. They pray that the evidence of their witnesses may be taken.

If the pleader of the defendants was in fault, the appellants may have their remedy against him. The order for the defendants' witnesses to attend was issued on the 6th of December; the case was not decided until the 26th of February 1848, or more than two months and a half after that order. I decline therefore to admit this appeal, because the neglect of the defendants in not attending to their case is manifest.

THE 25TH APRIL 1848.

Appeal from a decision passed by Mr. H. S. Thompson, Moonsiff of Sulkeah, on the 21st of February 1848.

Bhola Dhobee and Khaitroo Dhobee, (former Defendants,) Appellants,

versus

Sheik Dagoo, (former Plaintiff,) Respondent.

FOR rupees 27, 7 annas, 5 gundahs, balance of account.

This case was instituted to recover the above sum, which the moonsiff decreed, having only heard the evidence and proof on plaintiff's part.

The defendants appointed a vakeel, but did not file any answer.

In appeal, the defendants urge, that subsequently to their appointing a vakeel Bhola fell ill, and this prevented their meeting the plaintiff's claim with an answer. They point out that the case was only one month and sixteen days pending from institution until the date of decision.

The defendants, I observe, did so far attend to this demand that they appointed a pleader; and Bhola gave security for the amount claimed according to Regulation II of 1806, he having been arrested by process under that law. Under these circumstances, and considering the short time the case was on the moonsiff's file, I decree the appeal, and remand the case for trial.

THE 27TH APRIL 1848.

Appeal from a decision passed by Moolvee Myenoodeen Sufdar, Additional Principal Sudder Ameen, on the 16th of April 1847.

Degumberree Dossee, (former Defendant,) Appellant,

versus

Bhoobun Munnee Gooptee, (former Plaintiff,) Respondent.

FOR possession (with wassilaat) of 35 beegahs, 10 kottas of lakhiraj land. Suit laid at rupees 1,082, 3 annas, 12 gundahs.

The plaintiff, Bhoobun Munnee Gooptee, sued the defendants, stating that Degumberree Dossee, the talookdar, keeps her out of possession of 35 beegahs, 10 kottas in mouzah Luckeecantpoor, pergunnah Magoorah, which the plaintiff alleges is her, plaintiff's, lakhiraj tenure; and she further states that the predecessor of this defendant (Degumberree) in the talook, by name Ramdhun Roy, had ousted her from the land so far back as 1246, she therefore sues him as a defendant. Ram Chand Bhuttacharj, the original lakhirajdar, sold the disputed ground, as well as other ground, for 3,151 rupees in Assin 1233 to her, and she files the kubala or deed of sale then given her by that person. Ram Chand is now dead, and in this case is represented by his widow Kadum Beenee. Plaintiff sues for wassilaat, or mesne profits.

No answer in the case was given by Ramdhun Roy; and the defendant, Degumberree, answers that the plaintiff never did possess the land she claims. This land is part of the assets of her talook; and she says that the ryots who cultivated still pay her, as they had paid her predecessor rent for it, direct.

The additional principal sudder ameen gave a decree in favor of plaintiff, awarding her 30 beegahs, 3 kottas, which was the quan-

city ascertained by an ameen (who made an affirmation, though not the formal one, regarding the truth of his report) deputed from the additional principal sudder ameen's court, to belong to the plaintiff. He did not award mesne profits for the period previous to the institution of the suit, as the amount was not proved. He considered the plaintiff entitled to mesne profits subsequent to its institution.

The defendant, Degumberree, appeals, and submits that the decision passed by the additional principal sudder ameen was not supported by valid documents showing the ground to be lakhiraj; and she further submits that the plaintiff had neglected to proceed with her case in the lower court, rendering her subject to the penalty of having it dismissed in that court.

An answer was filed to the petition of appeal by the plaintiff, respondent, who submits that the documents and proof, adduced by her, support the lower court's decision.

This was a claim to recover possession of ground, alleged to be lakhiraj, which the plaintiff (respondent) says that the predecessor, Ramdhun Roy, of the defendant, Degumberree, had dispossessed her of; but which possession, and right of tenure free from rent by plaintiff, is denied by the defendant, Degumberree. To prove the validity of the lakhiraj tenure, the plaintiff filed copies of the jumma bundec papers of 1190, wherein it appears that Bulram Bhuttacharj was entered as the holder of this lakhiraj land, in mouzah Luckeecantpoor. These papers are supported by two "chars" dated in 1165 and 1170, respectively, granted (by an officer employed under Nowab Ally Verdy Khan, it seems) to Bulram Bhuttacharj, the ancestor of the person, Ram Chand Bhuttacharj, who had sold the land to her. The kubala, or deed of sale, is admitted by his (Ram Chand's) widow the defendant, Kadum Beenee; and the plaintiff (respondent) has filed two decisions passed by the special commissioner, dated the 8th of July 1844 and the 11th of March 1847, showing that "chars" of the date and description of those filed by the plaintiff are admitted as valid documents to uphold claims to lakhiraj tenures. Also the plaintiff (respondent) filed an extract from the collector's registry of lakhiraj tenures, showing that the tenure was duly entered in the records of the collector's office, under the provisions of Regulation XIX. of 1793. Ranneedhee Lushker, Ranjoye Lushker, Kaooree Lushker, Mudden Najik, Bholanath Lushker, Teeluk Lushker, Chunnoo Sheik, and Dataram Doss, depose to the plaintiff (respondent) having had possession of the ground she claims, and to her having been ousted from it by Degumberree's predecessor, Ramdhun Roy. Some of these witnesses say they are ryuts of the ground in dispute, and had paid rent to the plaintiff for their tenures, previous to her having been dispossessed. Chunnoo Sheik and Dataram Doss depose to two kuboolcuts (filed) held

by the plaintiff, as having been given by the ryuts named therein to the plaintiff. The report of the ameen deputed by the lower court supports this evidence.

The defendant has filed some talookdaree accounts to show that ryuts (whom she did not name either in her answer or petition of appeal) on the ground pay rent direct to her for it. These accounts, which the evidence of her witnesses is intended to support, appear to me to have been got up for this occasion, and are exceedingly fresh-looking for papers said, some of them, to have been written out ten years ago. I am of opinion that if any ryuts who paid rent to her had occupied the land, the defendant would have named them in her answer or petition of appeal. I consider that the documentary and oral evidence in this case greatly preponderates in the plaintiff's (respondent's) favor. With respect to the plaintiff having neglected to proceed with her case for six weeks, I have to observe that the lower court having passed over the alleged default, (which it is, however, not clear to me, took place,) has, by the existing law, cured it. I accordingly dismiss the appeal.



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PRESENT: F. CARDEW, ESQ., JUDGE.

THE 2D MAY 1848.

Case No. 275 of 1847.

Regular Appeal from a decision passed by the Moonsiff of Doobajpore, Moulvee Atta Ale, November 27th, 1847.

Brijoo Ghose, (Defendant,) Appellant,

versus

Bindrabun Gorain, (Plaintiff,) Respondent.

THIS suit was instituted by respondent, on the 27th February 1847, to recover from appellant the sum of 15 rupees, with interest thereon, being on account of money borrowed by the latter of the former in 1250 B. S., which was acknowledged to be due on an adjustment of accounts, which took place in Jethi 1251.

The appellant, in answer, simply denied the claim.

The moonsiff, considering the debt proved by the evidence adduced, decreed the principal sum of 15 rupees; and there being, in my opinion, no sufficient grounds for interference with the decision, I confirm it, and dismiss the appeal with costs.

THE 3D MAY 1848.

Case No. 26 of 1848.

Regular Appeal from a decision passed by the Moonsiff of Soorj, Koolodanund Mookerjee, December 29th, 1847.

Parbuttee Dibya and Gungamunee Dibya, (Defendants,) Appellants,

versus

Tarnee Churn Race, (Plaintiff,) Respondent.

THIS suit was instituted by plaintiff, on the 12th August 1846, to recover from the defendants, Wukil Munee D'bya, (since deceased,) Parbuttee Dibya, and Gungamunee Dibya, possession of a putnee jumma, comprising beegahs 29-8 of land, situated in mouzah Kuria, and the rent thereof for 1250, 1251, and 1252, at the rate of Sicca rupees 23, or Company's rupees 24-8-6, a year, on the allegation that he had purchased the putnee of 8 annas' share of lot kismut Kuria from the zemindars, Kunthar Race and others, under

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a deed of sale, bearing date the 30th ~~April~~ 1250, in which it was stipulated that the rent of the disputed putnee jumma, which had been previously acquired by the defendants' husband, Goluknath Hujra, should be received by him, (plaintiff,) and considered as included in his putnee; but the defendants refused to pay him the rent.

The defendants, in answer, denied the right of the plaintiff to demand rent of them, on the ground that the arrangement entered into between him and the zemindars had the effect of setting aside their putnee, and that the zemindars alone could receive rent from them.

This was denied by plaintiff, in his reply, which disclaimed all intention of disputing the defendants' rights as independant putneedars.

The moonsiff decreed the suit in favour of plaintiff; and there being no doubt as to the right of a zemindar to assign over his rents to a third party, and as the arrangement can in no wise affect the defendants' rights as putneedars, I confirm the decision, and dismiss the appeal with costs.

THE 4TH MAY 1848.

Case No. 27 of 1848.

*Regular Appeal from a decision passed by the Moonsiff of Soory,
Koolodanund Mookurjea, December 30th, 1847.*

Bydnath Misr, (third party,) Appellant,
versus

Ramlochun Dutt, (Plaintiff,) and Gopal Chund Singh, (Defendant,) Respondents.

THIS suit was instituted by the plaintiff, Ramlochun Dutt, as the proprietor of 9 beegahs of *lakhiraj bast* land, situated in the town of Soory, on the 7th September 1846, to recover from the defendant, Gopal Chund Singh, the sum of Company's rupees 9-6, being arrears of rent, with interest, from 1249 to 1252 B. S., inclusive, on a dwelling house, late in the occupancy of Fyzoo Koonjura.

The plaintiff stated that he purchased the proprietary right in the *lakhiraj* land at public sale in 1243 B. S., and received the rent of the disputed dwelling house from Fyzoo Koonjura up to the year 1248, when the rights of the latter in the property were purchased by Ruttun Saha in execution of a decree of court; that in 1250 Ruttun Saha sold the property to Gopal Chund Singh on condition that he made good to plaintiff the arrears of rent due, and on the 21st Poos 1251 Gopal Chund Singh executed a *kubooleut* in plaintiff's favor; but he refused to pay the rent, and hence the necessity of this suit.

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The defendant, Gopal Chund Singh, in answer, denied the claim, pleading that the disputed dwelling house belonged to muhal Harriot-gunge; that he gave a kubooleut to plaintiff under protest, pending the decision of a suit between plaintiff and Bydnath Misr, for possession of Harriot-gunge, and the latter having obtained a decree, he executed a kubooleut in his (Bydnath Misr's) favor in the month of Assin 1252.

Bydnath Misr (appellant) filed a petition, on the 15th January 1847, objecting to the claim, on the grounds that the disputed dwelling house belonged to muhal Harriot-gurge, which was awarded to him by a decree of this court under date the 21st February 1846; and that the defendant accordingly executed a kubooleut and paid rent to him.

The moonsiff decreed the suit to plaintiff, on the grounds that it was satisfactorily proved by the evidence of witnesses, and the *jumma-wasil-bakee* accounts from 1243 to 1252 filed on the plaintiff's part, that Fyzoo Koonjura, the late occupant of the dwelling house, paid rent to plaintiff as lakhirajdar, and that the defendant and Bydnath Misr had failed to establish their pleas.

The appellant objects to this decision as being at variance with the decree passed in the suit referred to in the answer; but, on consulting the record of that suit, I find that the disputed dwelling house was returned as claimed by the present plaintiff as lakhiraj; and as the decree passed by this court in appeal expressly stated that the decision could not prejudice the right of any parties to hold rent-free any portion of the lands included in Harriot-gunge, and as the moonsiff's decision on the point at issue in this suit is in accordance with the evidence, I confirm his award, and dismiss the appeal with costs.

THE 5TH MAY 1848.

Case No. 28 of 1848.

Regular Appeal from a decision passed by the Moonsiff of Gopulpore, Goopeenath Dass, December 28th, 1847.

Koochil Pal, (Plaintiff,) Appellant,

• *versus* •

Gorachand Pal, (Defendant,) Respondent.

THIS suit was instituted by plaintiff (appellant) on the 13th November 1846, to recover from the defendant, Gorachand Pal, the sum of Company's rupees 49-8-11, principal and interest, on a bond alleged to have been executed by the latter in favor of the former, on the 21st Bhadro 1245 B. S., corresponding with the 5th September 1838, in acknowledgment of a loan of 25 rupees.

The defendant, Gorachand Pal, in answer, denied the debt, and pleaded that the case had been got up by plaintiff in renewal of several attempts to extort money from him through the civil courts, in consequence of a quarrel which arose between them in the month of Bysakh 1242.

The plaintiff, in his reply, stated that the quarrel between them had arisen since the month of Asin 1248, before which period they were on terms of friendship.

The moonsiff was dissatisfied with the evidence adduced in support of the claim, and found the defendant's pleas confirmed both by the testimony of witnesses, and the result of two suits instituted against him by plaintiff, and decided in defendant's favor on the 28th December 1845 and the 25th January 1846 respectively, which precluded all probability of any money transaction having taken place between them on the date of the bond, the subject of dispute, and he therefore dismissed the claim as being unjust; and being of opinion that no sufficient grounds have been shown for interference with the decision, I confirm it, and dismiss the appeal with costs.'

THE 6TH MAY 1848.

Case No. 30 of 1848.

Regular Appeal from a decision passed by the Moonsiff of Amduhra, Gholam Buttool, December 31st, 1847.

Nubukanth Pal, Gunganarain Sirkar Mundul, and Takoor Das Chokeedar, (Defendants,) Appellants,

versus

Byrub Nath Mundul and Ramnurain Mundul, (Plaintiffs,) Respondents.

THIS suit came before me on appeal on the 7th August last, when it was remanded to the moonsiff's court for further investigation. (*Vide* Decisions of the zillah court of Beerbhoom for 1847, page 128.)

The plaintiffs sued to recover the value of 299 *sulees*, 9 *cottahs*, 1 *chittack* of paddy, being the difference between a certain quantity of that grain that had been attached in execution of a decree of court at the instance of the decreeholder, Pran Kisto Sirkar, and taken charge of by appellants under a surety-bond, and the quantity received by the plaintiffs, when the attachment was taken off.

The appellants acknowledged having executed the surety-bond, but pleaded non-liability, on the main grounds that they did not take actual charge of the grain; that the grain was stored up with plaintiffs' concurrence in a granary belonging to plaintiffs' nephew, Ram Nurain Gope, and in the houses of their *hoorfadars*, or sub-tenants; and that, on the attachment being taken off, plaintiffs received

charge of the grain, expressing themselves satisfied as to its correctness.

The moonsiff, after making further investigation, as directed by this court, and deputing an ameen to make a local enquiry, decreed the suit to the plaintiffs against appellants, on the grounds that it was proved in evidence that appellants took formal charge of the attached grain; that on the attachment being taken off, the grain was measured by the court peon, and the quantity sued for found deficient; and that the evidence adduced on the part of appellants failed to establish their pleas: and being of opinion, on perusal of the record, that no sufficient grounds have been shown for interference with the decision, I confirm it, and dismiss the appeal with costs.

THE 15TH MAY 1848.

Case No. 37 of 1848.

Regular Appeal from a decision passed by the Principal Sudder Ameen of Beerbhoom, Moulvee Nujumul Hug, January 14th, 1848.

Ootsub So and Anund So, (Plaintiffs,) Appellants,

versus

Bykuntath Mookhopadhya, Roopnurayun Ghose, Bisumbhur Ghose, and Muhesh Chunder Ghose, (Defendants,) Respondents.

THIS suit was instituted by Ootsub So and Anund So (appellants) as the farmer (and his security) of muhal mouzah Dewangunge and its dependencies, *maths* Sonajoollee and Ghurpora, in talook Dehoocha, on the 10th November 1846, to contest a summary decision passed by the collector of Beerbhoom under Regulation VII. 1799.

The summary suit in question was instituted against appellants by Bykuntath Mookhopadhya as the putneedar of *turuf* Dewangunge, on the 20th August 1846, corresponding with the 5th Bhadro 1253 B. S., to recover the sum of Company's rupees 483-8-9, the rent, with interest, due from them, as the farmers of the *muhal* set forth above, for the entire year 1252; and the collector decreed the suit in full of the claim, under date the 18th September 1846. Appellants objected to the decision on the grounds that Bykuntath Mookhopadhya had no title to receive the rent, the real putneedars being Roopnurayun Ghose, Bisumbhur Ghose, and Muhesh Chunder Ghose, who purchased the tenure of the zemindars at the close of 1251; and that the claim, being for a period in excess of one year prior to the date of institution of suit, could not be heard summarily.

The defendant, Bykuntath Mookhopadhya, in answer, pleaded that he held the putnee under a deed of sale executed by the zemindars in his favor on the 14th Chyete 1251, and, after he had receiv-

ed formal possession, appellants gave him an agreement in renewal of the lease they had entered into with the zemindars; that appellants were now acting in collusion with Roopnurayun Ghose and others, the pretended putneedars, in order to deprive him of his rights. He denied that the summary suit was barred by lapse of time.

Roopnurayun Ghose, Bisumbhur Ghose, and Muhesh Chunder Ghose, who were made defendants by a supplemental plaint, filed an answer in support of appellants' statement.

The principal sudder ameen considered it proved with reference to the evidence adduced on both sides that the defendant, Bykunt-nath Mookhopadhya, was in possession of the putnee, and he therefore dismissed the case, but at the same time he declared the collector's decision modified by deducting from the award the kists, or instalments of rent, for the months of Chyte, Assar, and Srabun, as having been due more than a complete year before the date of institution of the summary suit; and he charged appellants with full costs.

It does not appear from the principal sudder ameen's decision, in whose name the putnee is registered in the zemindar's *serishtah*. This, in a suit of this nature, is an important point, which the principal sudder ameen has lost sight of altogether. The decision does not state what is the amount of the three kists that are to be deducted from the collector's award, and consequently what sum the defendant, Bykunt-nath Mookhopadhya, is entitled to receive under it, nor does it give any reason for charging appellants with full costs when the validity of their objections to the collector's award is admitted as to one of the issues. I, therefore, considering the decision as incomplete, remand the suit to the principal sudder ameen for further investigation and re-trial with reference to the above remarks.

THE 17TH MAY 1848.

Case No. 36 of 1848.

Regular Appeal from a decision passed by the Principal Sudder Ameen of Beerbhoom, Moulvee Nujumul Hug, January 13th, 1848.

Bishoonath Sirkar, Dwarkanath Sirkar, and Shamachurn Sirkar,
(Plaintiffs,) Appellants,

versus

Buhadoor Ali Khan, Bhiknee Bibi, Shumsheer Ali Khan, and
Juboo Bibi, (Defendants,) Respondents.

THIS suit was instituted on the 20th June 1846, to recover possession of 120 beegahs of land, with mesne profits for 1253 B. S. Value of suit, Company's rupees 645-11-10.

The disputed land was claimed by the plaintiffs (appellants) on the allegations that it was part and parcel of mouzah Maldiha belonging to their *mokurruree ghatwallae talook* Soema; and that the defendants dispossessed them thereof in the month of Agrahun 1252.

The defendants contended that the disputed land belonged to their *mokurruree mouzah* Doomdoomee, and that plaintiffs never had possession.

In refutation of the claim the defendants produced three maps which had been filed in former suits, involving boundary disputes relating to the same estates, and other documents, showing that the western boundary of mouzah Doomdoomee, separating it from mouzah Maldiha, was a road leading from Luchoorae Dihi to Salooka; and the principal sudder ameen, assuming that boundary line to be the correct one, dismissed the suit, because the plaintiffs' own witnesses (defendants did not produce any) deposed that the disputed land lay to the east of the road indicated.

This reason is not borne out by the evidence, for the witnesses stated that there were more roads than one leading between the two places of Luchoorae Dihi and Salooka; and it is not apparent from their depositions which of them is the road laid down as the boundary line; and as the point can only be determined by a local enquiry, I remand the suit to the principal sudder ameen for re-trial, in order that he may adopt the mode of procedure thus indicated.

THE 17TH MAY 1848.

Casc No. 38 of 1848.

Regular Appeal from a decision passed by the Moonsiff of Dhekhabaree, Nil Madhub Mookerjee, January 25th, 1848.

Gour Huree Sen and others, putneedars, and Gungace Gope, ryot,
(Defendants,) Appellants,

versus

Debnath Ghose, (Plaintiff,) Respondent.

THIS suit was instituted by the plaintiff, Debnath Ghose, as the zemindar of lot Saecta, on the 15th May 1847, to recover possession of one beegah six cottahs of land, situated in mouzah Hathura, and rent thereof from 1248 to 1253 B. S., at the rate of Sicca rupees 1-0-15. Value of suit, Company's rupees 38-15-5.

The plaintiff had instituted a suit, No. 472 of 1843, in the moonsiff's court, against the present defendants, to set aside a summary decision passed by the collector, under Regulation V. 1812, in

rejection of his (plaintiff's) demand for the rent of the disputed land for 1249, to recover which he had issued an attachment of distraint against the ryot, Gungae Gope, and the moonsiff recorded a non-suit, on the grounds that the plaintiff was not in possession, inasmuch as the ryot paid rent to the defendants, Gour Huree Sen and others, the putneedars of kismut Jumunee-gunga, in lot Khumar-danga. The present suit has been instituted in consequence, to try the plaintiff's right to possession of the disputed land, which right defendants denied in their answer; and the moonsiff now gave the plaintiff a decree, on the grounds of a report of a local ameen deputed in the former suit, by awarding to him possession of the disputed land against the defendants, generally, and the amount of rent sued for against the ryot, Gungae Gope, alone.

On perusal of the moonsiff's proceedings in the former suit, I find that the defendants, Gour Huree Sen and others, filed a petition, objecting to the report of the ameen on several grounds, which petition was never disposed of by an order on the merits, and therefore the decision of the moonsiff, in the present suit, being founded on that report, is untenable. His decision is also irregular in awarding against the ryot, Gungae Gope, the amount of rent sued for, for the collector's decision in respect to him was final; and in this suit the plaintiff could only recover the rent, in the event of his establishing his right to possession, in the shape of *wasilat* from the party from whom it has been received. I therefore reverse the decision appealed against, and remand the suit to the moonsiff for re-trial with reference to the above remarks.

THE 17TH MAY 1848.

Case No. 46 of 1848.

Regular Appeal from a decision passed by the Moonsiff of Dhekka-baree, Nil Madhub Mookurja, January 25th, 1848.

Gour Huree Sen and others, putneedars, and Kishto Gope, ryot,
(Defendants,) Appellants,

versus

Debnath Ghose, (Plaintiff,) Respondent.

THIS suit was instituted by the plaintiff, Debnath Ghose, as the zemindar of lot Saeeta, on the 15th May 1847, to recover possession of seven cottahs of land, situated in mouzah Hathura, and rent thereof from 1248 to 1253 B. S., at the rate of 4 *annas*, 4 *gundas* per annum. Value of suit, Company's rupees 9-7-2.

The circumstances of this case are similar to those set forth under case No. 38 of 1848, decided this day, and I send back the suit to the lower court for re-trial for the same reasons.

THE 17TH MAY 1848.

Case No. 246 of 1847.

Regular Appeal from a decision passed by the Moonsiff of Doobraj-pore, Moulvee Atta Allee, September 14th, 1847.

Ruhum Khan and others, (Defendants,) Appellants,

versus

Kureemun Bibi, (Plaintiff,) Respondent.

THIS suit was instituted by respondent, on the 24th July 1846, to recover from appellants possession of land and other real property, valued at Company's rupees 267-10-8.

The moonsiff decreed for respondent, who has now filed a petition, withdrawing her claim, and requesting that the moonsiff's decision may be set aside, the costs of suit in both courts being charged to each party respectively. This being agreed to by appellants, I decree the appeal to them accordingly.

THE 18TH MAY 1848.

Case No. 42 of 1848.

Regular Appeal from a decision passed by the Moonsiff of Oohkra, Gobind Chund Chowdhree, February 3d, 1848.

Kasheenath Acharje, Ram Mohun Acharje, Manikchund Acharje, Soorjnurayun Acharje, and Chundernurayun Acharje, (Defendants,) Appellants,

versus

Ram Kesh and Ramanath Kesh, (Plaintiffs,) Respondents.

THIS suit was instituted on the 26th January 1847, to recover the sum of Company's rupees 285, being the value of a raft, comprising 52 pieces of saul timber with the cross pieces and fastenings thereof.

The plaintiffs stated that they purchased the timber raft in question of Goburdhun Mahato, in the river Damoodur, and placed it in charge of Sonatun Keot at Ratooriya ghat, belonging to a muhal

held in farm by the defendants Acharje, (appellants,) who, on the evening of the same day, carried it off by force to Beerbunpore ghat, and appropriated it to their own use.

The defendants Acharje, in answer, denied the plaintiffs' statement *in toto*, pleading that the suit had been got up in order to shirk off payment of a debt which plaintiffs owed them; and that they (defendants) did not leave their houses on the date set forth in the plaint, it having been the day after the *Bijace-dusumce poojah*, which hereditary custom obliged them to pass at home in idol worship.

Goburdhun Mahato and Sonatun Keot, who were made defendants to meet objections, filed answers in support of the plaint.

The moonsiff, finding the evidence of the plaintiffs' witnesses as to the facts set forth in the plaint corroborated by the result of a local enquiry, which he made in person, and being of opinion that the defendants' evidence failed to establish their pleas, decreed the suit to plaintiffs by awarding to them, against the defendants Acharje, (appellants,) the sum of 260 rupees, being the value of the 52 pieces of *saul* timber, at the average rate of 5 rupees a piece, disallowing the claim to the value of the cross pieces and fastenings of the raft, because it was admitted on the plaintiffs' part that such were always thrown into the bargain when a raft of timber is sold in one lot; and no sufficient grounds having been shown, in my opinion, to impugn the correctness or justness of the decision, I confirm the same, and dismiss the appeal.

THE 18TH MAY 1848.

Case No. 44 of 1848.

Regular Appeal from a decision passed by the Moonsiff of Sarhut, Sumecnooddeen Ahmud, January 28th, 1848.

Boodhoo Mahato, (Defendant,) Appellant,

versus

Doolal Dutt Rae, (Plaintiff,) Respondent.

THIS suit was instituted on the 27th August 1847, to recover the sum of Company's rupees 9, being the value of a cow with calf.

The plaintiff stated that, on the 5th Assin 1250 B. S., he made over the cow in question into the charge of the defendant Boodhoo Mahato, (appellant,) to graze and take care of, on the agreement that he (defendant,) should receive one day's milk in four days for his trouble; that about ten days afterwards defendant reported to him that the cow had strayed away from his herd, and saying that he would search for her and bring her back; but he never restored her, and plaintiff consequently instituted this suit under the belief that defendant had made away with the animal.

The defendant Boodhoo Mahato, in answer, denied the claim; denied having taken charge of the cow, and alleged that plaintiff had made away with her himself, and had instituted this false suit against him through enmity.

The moonsiff decreed for the plaintiff, recording that the claim as set forth in the plaint was satisfactorily proved by the evidence adduced on his part, and that defendant had produced no proof whatever in support of the answer; and being of opinion that no sufficient grounds have been shown to impugn the correctness or justness of the decision, I confirm it, and dismiss the appeal.

THE 23D MAY 1848.

Case No. 47 of 1848.

*Regular Appeal from a decision passed by the Moonsiff of Kytha,
Wujecooddeen Mahomed, February 17th, 1848.*

Sectanath Bundhopadhy, (Plaintiff,) Appellant,

versus

Goodur Mundul and Kheta Mundul, (Defendants,) Respondents.

THIS suit was instituted by appellant, on the 18th January 1847, to recover the sum of Company's rupees 56, principal and interest, on a bond alleged to have been executed in his favor by the defendants, Goodur Mundul and Kheta Mundul, under date the 2d Chyte 1247 B. S.

The defendants denied the claim, and pleaded that on the date set forth their elder brother, Ram Kulyan Mundul, (deceased,) was the manager of their household affairs, and it was therefore improbable that they should have borrowed money without his being a party to the transaction; and that the suit had been instituted on a forged bond, in a spirit of revenge, in consequence of a quarrel that they had had with the plaintiff in the month of Assar 1253.

The moonsiff was of opinion that the evidence of the three witnesses examined on the plaintiff's part was not only unsatisfactory in itself, but was unworthy of confidence in that they were residents of different villages and the testimony of two of them had been rejected in former suits; that the account book produced in furtherance of the claim could not be relied on, its very appearance coupled with certain irregularities of entry being inductive of suspicion that it had been got up for the occasion; and added to the above, the fact of the existence of enmity on the plaintiff's part towards the defendants, which was proved by the evidence adduced

in support of the answer, led him to regard the claim as fraudulent; he therefore dismissed the suit; and being of opinion that no sufficient grounds have been shown to impugn the correctness or justness of the decision, I confirm it, and dismiss the appeal.

THE 23D MAY 1848.

Case No. 50 of 1848.

Regular Appeal from a decision passed by the Moonsiff of Kundera, Mirza Ushkuree Fikrut, February 24th, 1848.

Rusoomyee Dibya, (Defendant,) Appellant,

versus

Khetromunee Dibya, (Plaintiff,) Respondent.

THIS suit was instituted by plaintiff, Khetromunee Dibya, on the 18th March 1847, to recover possession of an eight annas' share of certain lands and other real property situated in mouzah Goorpara, comprising the hereditary estate of her husband, Jugut Chund Banoorjea, (deceased.) Value of suit, Company's rupees 241-6.

The plaintiff stated that the property, as set forth, descended in equal shares to her father-in-law, Anund Chund Banoorjea, and Bishonath Banoorjea, who were full brothers, living together in family partnership; that, at the death of her father-in-law her husband succeeded as his heir, and enjoyed with his uncle, Bishonath, possession of the property on the same terms; that, after the death of her husband (date not given), she took up her abode, with the advice and concurrence of Bishonath, at the house of her own parents in the village of Akoonee, to enable her to superintend the education of her only brother, who was left an orphan, and she continued to receive from Bishonath a share of the profits arising from her husband's estate up to the year 1251 B. S., when Bishonath and his wife, Khirudmunee, died a short time after each other; that, on her attempting to take possession of her husband's share of the estate, she was opposed by the defendant, Rusoomyee Dibya, who claimed the whole of the property in virtue of a deed of gift executed by Khirudmunee in favour of her (Rusoomyee's) two minor sons; that she did not dispute the right of Khirudmunee to dispose of her husband Bishonath's share of the property, but she could not admit the deed of gift to be detrimental to her own rights, and therefore instituted this suit to recover possession.

The defendant, Rusoomyee Dibya, (appellant,) in answer, denied the claim, pleading that the suit was undervalued; that the claim was barred by lapse of time, inasmuch as plaintiff's husband died upwards of twenty-five years ago, and plaintiff never had possession of the property, and the statement that she received a share of the profits was false; that a portion of the lands set forth in the plaint was exclusively acquired by Bishonath himself, and six beegahs, comprising the family *deb kritree* and *pitree kritree* lands, (set apart for the maintenance of ceremonies due to the gods and deceased ancestors,) were in possession of other parties.

The plaintiff, in her reply, denied the facts set forth in the answer, and urged, in reference to the pleas as to lapse of time, that the fact of her husband having died twenty-five years ago, if true, was no detriment to her claim, as she has always received a share of the profits; and that the claim, being for hereditary property, might have been made at any time within the period of sixty years from the date of dispossession.

The moonsiff decreed the suit to plaintiff, with exception to certain of the lands, as set forth, recording simply, as the reasons of his decision, that the claim with the exceptions indicated was proved by the evidence of plaintiff's witnesses, and that the defendant had neglected for nearly three months to produce any proofs in support of her pleas.

The defendant re-urges in the reasons of appeal the pleas advanced in the answer, stating that she was unable to produce her proofs in the lower court in consequence of their having been filed in a suit regarding the same lands instituted, under Act IV. 1840, before the deputy magistrate of Cutwa, which suit was decided only the day before the moonsiff's decision in this case, and that the moonsiff refused to allow her vakeel further time.

The plea relative to the valuation of the suit was, I find, disallowed by the moonsiff on the 27th November 1847, and as the order was not appealed against, it must stand. The plea as to the claim being barred by lapse of time, the moonsiff has not disposed of. From the tenor of his decision he appears to consider that the *onus probandi* in respect thereto lay with the defendant, but that is not the case, for the statement made in the plaint to the effect that plaintiff received from her uncle-in-law, Bishonath, a share of the profits up to the time of his death, must be regarded as a special plea in bar of the law of limitations; and it was incumbent on the moonsiff to record a distinct opinion whether the point was proved or not, it being that on which the claim hinges entirely.

Deeming the decision incomplete, I remand the case to the moonsiff with directions to dispose of the point above indicated, and if the reason given by the appellant for not having filed her proofs be borne out on enquiry, to admit them, if it should be necessary, in support of her answer generally.

THE 25TH MAY 1848.

Case No. 254 of 1847.

Regular Appeal from a decision passed by the Moonsiff of Kundera, Mirza Ushkuree Fikrut, 18th September 1847.

Hursoondree Dasya, Dasmunee Dasya, and Surbo Mungala Dasya,
(Plaintiffs,) Appellants,

versus

Nuseerooddeen, (Defendant,) Respondent.

THIS suit was instituted on the 19th February 1847, to recover the sum of Company's rupees 61-8-9, due on a *kistbundee*, or instalment bond, dated the 21st Agrahun 1242 B. S.

The plaintiffs stated that the deed in question was executed by the defendant, Nuseerooddeen, (appellant,) in favor of their ancestor, Sreemutee Dasya, in acknowledgment of an arrear of rent for 1239, amounting to Sicca rupees 36-4-4, on a jumma held by him in mouzah Mulanpore *oorf* Raykha, a dependancy of lot Kajee; that the defendant had paid the sum of six rupees, the amount of the instalments that fell due in 1242, under date the 25th Assar 1243, leaving a balance of Sicca rupees 30-4-4, which they sought to recover with interest.

The defendant, in answer, denied the bond. He stated that he and his four brothers succeeded in 1237 to a jumma of 76 rupees formerly held by their father, Soobanee Sheikh, in the estate indicated, and having separated, they each of them, for three years, viz. from 1237 to 1239, paid to the talookdar a separate share of the rent at the rate of rupees 15-3-4 per annum, and they resigned the jumma in 1240: it was impossible therefore that rupees 36-4-4 could have been due from him (defendant) for 1239; that he (defendant) had instituted a suit, under No. 49 of 1847, against the plaintiffs, to recover the value of crops of lands engaged by him recently, and this false claim had consequently been got up against him in a spirit of revenge.

The plaintiffs, in their reply, did not deny the facts stated in the answer in respect to the separation and subsequent relinquishment of the jumma by the five brothers, nor did they explain how under the circumstances so large an arrear of rent could have been due from the defendant for 1239; they restricted their reply to asserting that the defendant offered to settle the debt before the institution of the suit, and that they held similar bonds executed by the other brothers; and the moonsiff, with reference to the unsatisfactory nature of the reply, and to certain discrepancies in the evidence of the witnesses produced in support of the bond, which affected its authenticity, as well as with advertence to the fact of the existence of enmity between the parties, as inferred from the counter suit

mentioned in the answer, and to other circumstances that threw a doubt on the justness of the claim, dismissed the suit as not proved. On the same grounds I confirm the moonsiff's decision, and dismiss the appeal with costs.

THE 25TH MAY 1848.

Case No. 241 of 1847.

*Regular Appeal from a decision passed by the Moonsiff of Gopalpore,
Gopeenath Das, September 15th, 1847.*

Biprochurn Rae, Nemaceechurn Rae, Kartikchurn Rae, and Khema Takooranee, guardian on the part of Benoo Madhub Rae, (Defendants,) Appellants,

versus

Koilasnath Rae, (Plaintiff,) Respondent.

THIS suit was instituted by the plaintiff as the talookdar of lot Ekdala, on the 8th August 1846, to recover from the defendants (appellants) the sum of Company's rupees 192-1, being arrears of rent, with interest, alleged to be due for the years 1245 to 1253 inclusive, on a jumma of Sicca rupees 13-0-13, held by them in mouzah Bugwanpore.

The defendants, in answer, stated that their father, Tyluknath Rae, deceased, held the jumma set forth in the plaint up to the year 1244, but that owing to oppression on the part of the talookdar, who had instituted several groundless suits against him for arrears and assessment of rent, he relinquished the same on the 31st Bysakh 1245, which fact he mentioned in the suit No. 2149, then pending in court (between the same parties,) and neither their father nor themselves had possession of the land from that period; that plaintiff had since let out the land to other ryuts, the particulars of whose names and the quantity and situation of the land held by each are recorded in the answer in full.

The moonsiff decreed the suit to plaintiff, recording, as the reasons of his decision, that it was proved by the zemindaree accounts from 1244 to 1252, which were attested by the gomashthi, Kishto *alias* Bishun So, and by the evidence of Rughonath Ghose, Manik So, Gopal So, and Kishto Das Byragee, the last of whom was named as a witness on both sides, that the lands comprising the disputed jumma were still in defendants' occupancy; that the evidence of the witnesses produced in support of the answer could not be relied on, it being contradictory; and although the fact of defendants' father Tyluknath Rae's having relinquished the jumma in 1245, was mentioned in the suit indicated, yet that availed nothing, opposed to the fact of possession on the defendants' part.

The evidence adduced by the parties is so conflicting, I am of opinion that a just decision cannot be arrived at without a local enquiry, which the circumstances of the case rendered highly necessary. I therefore, regarding the decision of the moonsiff as having been passed without sufficient investigation of the merits, reverse the same, and remand the case to him for trial *de novo*, after instituting a local enquiry into the facts set forth.

THE 26TH MAY 1848.

Case No. 148 of 1847.

Regular Appeal from a decision passed by the Moonsiff of Doobraj-pore, Moulvee Atta Allee, June 10th, 1847.

Radhanath Banoorjya, (Defendant,) Appellant,

versus

Gyaram Mundul, (Plaintiff,) Respondent.

THIS suit was instituted by respondent, on the 6th August 1846, to recover from appellant the sum of Company's rupees 40-4, on a bond executed by the latter in favor of the former, on the 26th Sra-bun 1248 B. S., in acknowledgment of a debt of 25 rupees.

The appellant, in answer, admitted the bond, and pleaded that he had paid respondent the principal of the debt under a receipt bearing date the 11th Magh 1248.

The moonsiff decreed the suit to respondent in full of his claim, rejecting appellant's plea, on the grounds that the evidence of the three witnesses produced to authenticate the receipt was contradictory in respect to the place where the alleged payment was made; that the receipt bore a fresher appearance than its date warranted; and that the character of the hand writing did not correspond with respondent's hand writing as performed in his (the moonsiff's) presence.

None of these reasons are tenable in my opinion. It appears from the evidence that respondent was going to Kendoolee *mela* (a large fair that takes place in this district once a year), and, being in want of money, he called on his way at appellant's house and asked for the amount lent on the bond, which appellant then paid to him under the disputed receipt, which respondent wrote out with his own hand. The persons who witnessed the payment were Ramkanth Rae, who was in respondent's own employ at the time, Nursingh Ghose, one of the subscribing witnesses to the bond, who was also on his way to the *mela*, and Sreemunt Takore; and they all three state without variation that the money was paid in appellant's *chundee mundup*, or idol temple. In short there is nothing in their evidence to which a valid objection can be taken. The receipt itself also bears no mark of suspicion that I can discover; and I cannot admit the respondent's performance before the moonsiff as a test

by which to judge of the validity of the document, for a man can easily disguise his hand writing; and that respondent disguised his hand writing on that occasion is clear on comparing it with his acknowledged signatures attached to documents filed with the records of other suits, which I have called for, and examined at his own request, and which signatures correspond with the signature to the disputed receipt.

I consider the plea proved, and I therefore amend the moonsiff's decision by awarding to respondent only the interest of the debt up to the date of the receipt. Costs of suit in the lower court to be borne by the parties ratably, in proportion to the amount of claim decreed and dismissed: costs in this court to be charged to respondent.

ZILLAH BEHAR.

PRESENT: T. SANDYS, ESQ., OFFICIATING JUDGE.

THE 9TH MAY 1848.

No. 8 of 1848.

*Appeal against the decision of Moulvee Mahomed Ibrahim Khan,
Officiating Principal Sudder Ameen, dated 24th of February 1848.*

Beychun Lall, Meywa Lall, and others, (Defendants,) Appellants,

versus

Baboos Deywonauth Roy and Juykurn Lall, (Plaintiffs,) Respondents.

CLAIM, to recover Company's rupees 1,600, inclusive of interest, due on account of the purchase money of mouzah Luhsa Kcedeyahee, pergunnah Monohra.

This estate, the property of the defendants (appellants) and others, was sold for arrears of revenue on the 3d April 1834, and was purchased by the plaintiffs' (respondents') father, Muhadeyo Loll. The commissioner of revenue upheld the sale on the 8th December 1834, when, the purchase money being paid, the purchaser duly received his deed of sale on the 4th of March 1835. However, on the 13th July 1835, the sale was reversed by the Sudder Board of Revenue in favor of the defendants (appellants) and others, the late defaulting maliks.

On repayment of the purchase money, the purchaser received it back *minus* rupees 750, deducted for the Government revenue due on account of 1241 and 1242 F., that is, for the period between the date of his purchase and its reversal by the orders of the Sudder Board of Revenue.

The plaintiffs, declaring that they never obtained possession of the estate, sue for the recovery of the money thus deducted, with interest. They also sue the Government, together with the defendants (appellants) and others, their co-sharers.

The defendants plead that they never opposed the purchaser, who continued in possession during the period concerned.

The officiating principal sudder ameen, considering that the purchaser only obtained his deed of sale on the 4th of March 1835, and was obliged to complain to the collector of the defendants refusing to give him possession on the 23d of the same month, when shortly after the sale itself became null and void, it did not at all appear that the plaintiffs were ever in possession, and that the defendants had altogether failed in producing any satisfactory proof that such was the case. He accordingly decreed the suit in favor of the plaintiffs, releasing the Government, whose costs of suit were, in the first instance, to be paid by the plaintiffs, as recoverable from the defendants.

The defendants, in appeal, urge grounds of appeal of a frivolous nature, on which it is unnecessary to comment. But, they remark, they had applied to be permitted to file a copy of the collector's nazir's return to the order on the plaintiffs' petition before the collector on the 23d March 1835, above referred to; that the putwarree was in attendance, but the case was decided so quickly they had not time to secure his evidence being taken.

JUDGMENT.

The sale was not upheld by the commissioner until the 8th of December 1834. The plaintiffs, purchasers, did not obtain the deed of sale until the 4th March 1835, when they were obliged as immediately, on the 23d of the same month, to complain to the collector that the defendants (appellants) would not allow their possession, and very shortly afterwards, on the 13th of July following, the sale was reversed. According to the regulations and rules then in force, the plaintiffs, purchasers, could have exercised no power or authority as sale purchasers prior to the date of the deed of sale, and no active measures appear to have been taken after that date to secure their possession. Thus for argument's sake only, supposing that the defendants (appellants) did not oppose the plaintiffs' possession, they had only from March to the middle of July to realize the assets of the estate for two years 1241 and 1242 F. This could only have taken place under very extraordinary circumstances, and which the tenor of the evidence brought forward by the defendants (appellants) does not, in the slightest degree, meet. Indeed, under all the circumstances of the case, it is of the most worthless kind, and yet they have nothing better to offer in proof than the evidence of a rajpoot, a guwala, and a pashban: whereas, had the plaintiffs, purchasers, been in possession of the estate, it could not have been difficult for the defendants (appellants,) possessors of the estate both antecedent and subsequent to the sale, to have produced substantial proofs to that effect. The *onus probandi* fairly rests on their shoulders.

Nurkoolall the putwarree's name appears in the list of witnesses filed by the defendants (appellants), but he was not to be found according to its return, dated 7th January 1848, and from that date to the date of the decision, the 24th of February following, the defendants (appellants) took not a single step to secure his attendance. As the evidences of the other witnesses do not meet the emergencies of the case, I do not observe how that of this solitary witness could improve theirs. The production of the collector's nazir's return also, referred to by the defendants (appellants,) is now mooted for the first time, and even if produced, as it must have been dated subsequent to the 23d of March 1835, it could in no manner better their defence.

ORDERED,

That the appeal be dismissed without issuing notice to the respondents.

THE 11TH MAY 1848.

No. 4 of 1848.

Appeal against the decision of Moulvee Mahomed Ibrahim Khan, Officiating Principal Sudder Ameen, dated the 10th January 1848.

Baboos Roopchund and Petumber Singh, (Plaintiffs,) Appellants,

versus

Sheikh Akbur Hossein, Ahmud Hossein, and Mahommed Alli, sons, and Musst. Roshun and Rujbun, daughters, and heirs of Sheikh Kulub Hossein, deceased, Sheikh Willaiyut Hossein, Bahadoor Alli, Jungloo, and Chundoo, sons and heirs of Sheikh Kumar Alli, deceased, Sheikh Fuzzul Alli, and Muzhur Alli, (Defendants,) Respondents.

CLAIM, to recover rupees 5,000, inclusive of interest, balance of account as per particulars given at the foot of the plaint, due on a bond, dated 21st of Sawun 1235 F., pledging property, (styled tumusook bhurna,) as executed by Sheikh Kulub Hossein, deceased, Sheikh Kumur Alli, deceased, Sheikh Fuzzul Alli, and Sheikh Muzhur Alli, to Soondurlal, the plaintiffs' father.

This bond is of the following purport. After acknowledging a loan of rupees three thousand, it conditions that the lender from 1236 F., should appoint a suzawul to the borrowers' estate of Seyghoolee Buhadurpoor, whose duty it should be, after deducting the Govern-

ment demand of rupees 65 and the expenses of management, to attend to the balance profits being remitted to the lender. At the close of the year, on first satisfying the interest on the loan, whatever balance might accrue, should be credited to the liquidation of the principal; and that until the loan was satisfied in full, the suzawul would not be removed.

The plaint declares that the suzawul was discontinued from 1241 F., that, on Sheikh Kulub Hossein and Kumur Alli's death, they were succeeded by their heirs, the other defendants; who continued to liquidate the loan up to 1249 F., when they ceased making any further payments. The particulars of the realization, year to year, are entered at the foot of the plaint, of which the following is an abstract:—

F.	Rupees.		
1236	38	0	0
1237	100	0	0
1238	100	0	0
1239	100	0	0
1240	100	0	0
1241	200	0	0
1242	169	0	0
1243	199	0	0
1245	100	0	0
1246	124	15	0
1248	81	12	9

Sicca Rupees 1,312 11 9

The defendants generally deny the loan, the bond, and the transaction, *in toto*; moreover two of them, Bahadoor and Chundoo, plead that they are the sons of Waris Alli, and not of Sheikh Kumur Alli.

The officiating principal sudder ameen's decision considers that, as the bond specifies no period for repayment, the suit should have been instituted within the limitation period of twelve years, whereas it had now been made after a period of more than sixteen years; that the bond did not shew whether the borrowers held the entire, or only a fractional portion of the estate; and that it had been established on the proofs filed by the defendants, that a four annas title was held by Sheikh Waris Alli *oorf* Hingun, the father of Bahadoor and Chundoo. The suit, therefore, as shewing the liability of the entire estate, and as taken against Bahadoor and Chundoo, as the heirs of Sheikh Kumur Alli, was altogether incorrect. That he was of opinion the appointment of a suzawul and the payments shewn on the bond were a mere device to bring the case

within the limitation period of twelve years. That the account as per plaint and amended plaint, under comparison with the entries on the back of the bond, as well as the parole evidence taken before him, and copies of the recorded evidences of Juggoo Lall and others, as noticed at length in the decision, were irreconcilable and full of discrepancies. That the validity of the bond was dependant on the evidences of its subscribing witnesses, whereas the evidence of only one witness had been produced, one Indurmun Sahoo, and which was in itself any thing but satisfactory. He accordingly dismisses the suit.

The plaintiffs, in appeal, urge that, under Construction No. 196, 1st March 1815, the limitation period ought not to count from the date of the bond, but the date of last payment. That as the bond was a "tumusook bhurna" there was no necessity for its specifying any period of repayment. That the bond was good and valid, duly verified, registered, and sealed by the cazee of the pergunnah. That the subscribing witnesses to the bond, except one, were dead, and that instead, they had brought forward the evidence of most respectable people, such as Cazee Juwod Alli, Cazee Kasim Alli, moonsiff zaicyud, and Muksood Alli, son-in-law of the defendant Sheikh Fuzzul Alli. That he again repeats, Bahadoor and Chundoo were the sons of Sheikh Kumur Alli, and the liability of the bond affected the entire estate. That if the entries in the account in the plaint were incorrect, what did it signify when those on the back of the bond were correct? That a wrong judgment had been taken as to the inconsistencies of the evidence.

JUDGMENT.

The bond under which the plaintiffs (appellants) lay this action, is of a most preposterous description, and the evidence brought forward to support it is of a like character. As the wording of the bond prescribes no limit to the liability of the borrower's estate of Seyghoollee, so, according to the plaintiffs' own shewing, there need be no limit as to the when and where they might choose to institute their suit, inasmuch as it is only necessary for them to draw out an account of payments up to date, calculated at the rate shewn in the plaint to be endless, and which singularly enough shew the precise sum of rupees 5,000, without a fractional difference and sue accordingly at any time within an unlimited period, say a hundred years after the date of the bond. If the plaintiffs can manage this for sixteen years, what greater difficulty is in their way of attempting it for the longer period? No regulation, rule, or fiction of a document that I am aware of could ever invest them with such a dangerous power. Construction No. 196 says, "cause of action cannot be considered to arise previous to the money becoming payable," but this must be in good faith, of which nothing of the kind is traceable in the plaintiffs' proceedings.

The estate Seyghoolee, from the proceeds of which, according to the bond, the plaintiffs were to recover the loan, was only liable for the Government revenue of rupees 65, and the usual expences of management. Now, by Keymchund's evidence, of 25th September 1841, as per copy filed by the plaintiffs themselves, the rental of the estate stood from 4 to 500 rupees, yet neither whilst the plaintiffs' suzawul watches over the realization of the rents up to 1240 F., nor afterwards, when the estate is said to have been in the defendants' hands up to 1248 F., as per account above, in no one year is little more than half of the interest realized, and in some years little or nothing, whereas the tenor of the bond contemplates not only the recovery of the interest, but also the liquidation of the principal. Why the plaintiffs permitted this extraordinary state of things to continue for a period of twelve years, they do not vouchsafe to inform us. Indeed, so old is the claim set up by the plaintiffs, that all the subscribing witnesses to the bond, except one, are dead, and their other witnesses weary of it, for when questioned on points they might have answered as readily as others, which more particularly met the purposes of their evidence, their off-hand reply is, "too long ago to remember," and the putwarree Mungur Loll, the plaintiffs' most zealous witness, replies "that if he had thought he would have been expected to give evidence on such points, he would have written them down."

The sealing and registry of the bond also by Cazee Gholam Hossein merit no reliance. The plaintiffs call Cazee Juwad Alli, son-in-law of Cazee Gholam Hossein, and who succeeded his father-in-law on his resignation in March 1829, to testify to his father's registry of the bond. He recognizes his father-in-law's handwriting on the face of the bond, but, on referring to the registry, &c., received from the cazee's office, forwarded by Cazee Juwad Alli himself, no registered copy, or any other copy of this document is to be found, although the original bond bears an endorse on its back, that a copy was duly taken. The register book received back from the cazee, was issued on 30th of March 1826, and consisted of 138 pages, written up to the 83 page only, the rest remaining blank, with a memorandum at the 83d page, "finished this 21st Ramzan 1243 Hijree, the remaining pages blank," signed Cazee Gholam Hossein. The registry on the bond bears date 12th Suffer 1244 Hijree, corresponding 25th August 1828. Cazee Juwad Alli, also, by his own statement, is not a disinterested party, for he takes a lease of Seyghoolee in 1237, which, he says, he throws up through fear of the plaintiffs' prosecuting him, though in appeal, the plaintiffs themselves aver, his taking the lease in as far as regarded their interests, was unimportant. Acting as naeb for his father-in-law, Sheikh Gholam Hossein, and with the knowledge he thus must have had of the bond if a valid one, the estate also being in his immediate neighbourhood, the only wonder (and for any

explanation of which I look in vain to his evidence, is, that he ever ventured to think of taking the lease. I therefore attach little confidence either to the registry of the bond by the Cazee Gholam Hossein, or Cazee Juwad Alli's evidence.

The bond purports to have been witnessed by six witnesses, including the writer of it. Of these, only one, Indurmun Sahoo, has been produced, and one Alumchund, the son of one of the witnesses, who says he was present on the occasion of the execution of the bond. Indurmun's signature appears on the bond in an extraordinary position, on the face of the document apart from the signatures of the other witnesses. It, therefore, may or may not have been subsequently added, and of which perhaps some check might have existed had the cazee registered a copy as usual. At all events this circumstance cannot tell in favour of this witness's evidence, the tenor of which, as also that of Alumchund's, under all the circumstances of the case, is, in my opinion, quite worthless.

The bond does not bear the signature of Sheikh Kullub Hossein, Sheikh Kumur Alli, Fuzul Alli, and Muzhur Alli, but their names are written by one Moorad Alli, accompanied by marks in Persian character, which from the manner in which they are written, give some warranty, that the writer or writers, whoever wrote them, could write well. No evidence, however, has been offered on this point.

Studying the weakness of their wilfully obsolete claim, the plaintiffs filed a list of witnesses amounting to twenty-eight, eight of whom have given evidence. I have above commented on the evidence of Cazee Juwad Alli, and the evidence of the plaintiffs' two remaining respectable witnesses, Cazee Kasim Alli, moonsiff zaieyud, and Muksood Alli, son-in-law of Sheikh Fuzul Alli, one of the (defendants) respondents, is of the same obsolete tenor as the claim itself, proving nothing in the total absence of direct evidence. The same may be said of all the remaining witnesses, except Mungur Lal Putwarree. Amongst them are three styled peons, Lalla Raie, Deypun Raie, and Doondhee Raie, brought forward to prove the plaintiff's having demanded payment from his debtors, the (borrowers) defendants. Their evidence is to the purport, "that some ten or twelve years ago they were sent to demand payment from the defendants." But whether they or others were ever sent again during the sixteen years, or why not, the plaintiffs seem to think as little requiring explanation as that of allowing their claim to remain dormant in the non-realization of interest, much less of principal, for so many years at variance to the intent and purport of the bond itself.

Mungur Lal, the putwarree, is the active writer of a portion of the payments on the back of the bond. In this respect his evidence is as solitary as that of Indurmun Sahoo's. It does not, therefore, admit of being tested with other evidence; but its general tenor is of the same unsatisfactory character, as that of the evidence generally

in this case. He does not answer questions for which he is not prepared, because he kept no written memorandum of the transaction. His entries on the back of the bond, as described at length in the officiating principal sudder ameen's decision, are at variance to the account entered in the plaint. He also declares, that he acts in the matter as putwarree up to 1248, but as noticed by the officiating principal sudder ameen the recorded evidence of one Juggoo Lal before the distraint commissioner on the 5th September 1841, as per copy filed by the plaintiffs themselves, shews that he, Juggoo Lal, was the putwarree in 1247. The evidences of this Juggoo Lal, Keymchund, and Ruttun Dosad, before the distraint commissioner on the date abovementioned, testify to the bond the cause of action in the present case, but in what case, how or why, this evidence was taken by the distraint commissioner, the plaintiffs do not explain. In any case evidence of this kind can stand them of no avail in a case like this, in which every other evidence, direct or extraneous, has totally failed.

ORDERED,

That the appeal be dismissed without issuing notice to the respondents.

THE 18TH MAY 1848.

No. 7 of 1848.

*Appeal against the decision of Moulvee Mahomed Ibrahim Khan,
Officiating Principal Sudder Ameen, dated 11th February 1848.*

Chooa Singh, (Defendant,) Appellant,

versus

Musst. Noorun, (Plaintiff,) Respondent.

CLAIM for the possession of an eight annas' share proprietary in mouzah Rudhapore Dulbun, pergunnah Urwul, according to a deed of sale, for record of the title in succession to Kheyr Alli and Nuwab Alli, and to set aside the session judge's decision of 31st of March 1845, as also the deed of sale in favor of Chooa Singh, dated 26th August 1841. The suit in the aggregate valued at rupees 1,186-9-9.

The plaintiff declares that Musst. Reyshummee, the wife, and Nuwab Alli, the son of Kheyr Alli, in order to meet their necessities and in execution of decrees, sold her their eight annas' title in the estate under a deed of sale dated 25th August 1843, for rupees 500, and which was duly attested and registered both by the cazee and the register of deeds. She experienced difficulty in obtaining possession and at first compromised the claims of parties holding under advances to the amount of rupees 315, for rupees 265.

Other disputes arising, Baboo Tilukdharree Singh through enmity put forward Chooa Singh's claim and the dispute was carried into the criminal court under Act IV. of 1840, when, according to that court's decision of the 8th October 1844, the plaintiff's possession was upheld, her deed of sale being considered valid, and that of Chooa Singh's invalid. This decision was appealed to, and reversed by the session judge, but that functionary, subsequently, discovering grounds for the same, as recorded in his proceedings of 21st July 1845, submitted a report to the Sudder Nizamut for permission to review his judgment, which was disallowed by that Court. Under these circumstances she pursues her claim in the regular suit now instituted.

The defendant pleads that the deed of sale for the same eight annas' title of the estate, which he obtained from Kheyr Alli and Nuwab Alli, being of a prior date, viz. 26th August 1841, gives him a prior lien on the property. That, accordingly, he has held possession, of which he holds documentary proofs,—amongst others, returns made by the ameen on the occasion of the professional survey. That his deed of sale being unattested or unregistered either by the cazee or the register of deeds does not signify, inasmuch as Musst. Reyshummee is a “purdah nusheen” and had denied the deed of sale in favor of the plaintiff, and Nuwab Alli is an imbecile, both deaf and dumb.

The officiating principal sudder ameen, referring to the magistrate's decision of the 8th October 1844, and the session judge's proceedings of the 21st of July 1845, relative to the review of judgment, decides that the deed of sale in favor of the plaintiff had been fully and satisfactorily established, to the utter disproving of that brought forward by the defendant.

There were many other defendants, parties to the suit, amongst others Musst. Reyshummee, the wife, and Nuwab Alli, the son of Kheyr Alli. Their plea is an acknowledgment of the deed of sale executed in favor of the plaintiff, accompanied by a denial of that produced by the defendant. Baboo Tilukdharree Singh is also amongst the defendants. Chooa Singh is the only one of the defendants who has appealed.

He urges, in appeal, that his deed of sale is of prior date to the plaintiff's. That it has been proven by the evidences of eighteen witnesses in the criminal and civil courts. That under Act IV. of 1840, his possession was upheld in appeal and the application for review of judgment disallowed. That if the returns of the professional survey had been subjected to interpolations and erasures, why had the plaintiff or the officers of the collectorate record room neglected to notice them before? That Musst. Reyshummee herself had acknowledged his possession, as per copy of her petition filed by him as seen in the criminal court the 23d January 1844.

JUDGMENT.

The appellant has signally failed in establishing his deed of sale from first to last. Without prejudice to what occurred summarily under Act IV. of 1840, it is to be observed that his proofs are even more worthless now than they were then decided to be. Of nine subscribing parties to his deed of sale, including the writer of it, not one has been produced before the civil court, nor any reason assigned for his neglecting to do so. But instead, five witnesses are brought forward who are residents of different places within Baboo Tilukdharree's estates, whose influence and interference in this case are commented on in the magistrate's proceedings of the 8th October 1844, as being in accordance with his litigious character. Of these five witnesses, all more or less bear evidence on hearsay, especially Acharj Bux Raie and Deochund Mahto, and the tenor of their evidence generally is altogether inconclusive. Whereas, independent of her deed of sale being duly attested and registered by the cazee and register of deeds, of either of which the defendant's is wanting, the plaintiff has produced every witness to her deed of sale, including the writer of it, and their condition, some of them being co-parceners in the estate, and their testimony are as satisfactory and conclusive. Of the other documentary proofs brought forward by the appellant, none merit attention. His filing a copy of the ikrarnamah of the 15th of January 1843, after the manner in which its fabrication had been exposed by the session judge's proceedings of 21st July 1845, and regarding which, unable to offer any explanation, he maintains total silence, only shews his wilful recklessness in instituting this appeal. This ikrarnamah was filed in proof of his possession, purporting to be a return from himself and others as parties in possession on the occasion of the ameen's (attached to the professional survey) measurement of the estate. But as detailed in the session judge's proceedings of 21st July 1848, the appellant's name had undoubtedly been smuggled into the returns by the aid of interpolations and erasures, and it was on these grounds, as having come to his notice subsequent to his decision of the 31st of March 1845, that the session judge sought permission for review of judgment under his report to the Sudder Nizamut, No. 150, 7th August 1845, but which was disallowed as per the Court's reply No. 1177, of 29th August 1845, consequent on its having been ruled by the court, that no review of judgment could be admitted under Act IV. of 1840.

The appellant's silence also regarding the grounds of the magistrate's decision of the 8th October 1844, is of a like nature. The conduct of parties contesting summarily is fairly open to review, when the same cause of action is under trial in a regular suit. In this decision, the magistrate remarks on the unsatisfactory character of the evidence brought forward by

the appellant in proof of his deed of sale: he characterizes the appellant as the servant of Baboo Tilukdharree Singh, and the witnesses as the creatures of the latter, whose attendance even, as making them cognizant of the assumed transaction, was of a very suspicious nature, and who, as ignorant people unable to sign their names, were called on to give evidence, whilst those who did write and sign by procuration were kept back. The appellant, therefore, in a regular suit, had every opportunity for correcting any and every fault or omission of trial which might have occurred under summary decisions, and his not only neglecting to avail himself of such opportunity, but also persevering in the same line of conduct as that already condemned by the magistrate, throughout the trial of the regular suit, is tantamount to an acknowledgment of the justness of the summary decision.

Musst. Reyshummeo's assumed acknowledgment of 23d January 1844, is of a piece with the rest of the appellant's proofs. In her plea, Musst. Reyshummeo denies ever having authorized the presentation of any such petition, which purports to have been entered on her behalf in the criminal court by one Bunscedhur Mooklitar. Moreover, it is met by a counter petition of a much earlier date, viz. 31st August 1843, filed in the execution of decree case by Juttadharree Lal, the writer of the plaintiff's deed of sale, and who has duly given evidence in the present case, in which she acknowledges the sale to the plaintiff. I observe, the defendant (appellant,) in his plea, styles Nuwab Alli an imbecile, and thereby argues as to the illegality of the plaintiff's deed of sale; but the argument equally recoils on himself, inasmuch as the same person is made to appear as a party to his own deed of sale. From questions put by the defendant (appellant) to the plaintiff's two witnesses Durab Alli and Zoolfukar Alli, it appears that Nuwab Alli is afflicted with both deafness and dumbness, though able to write, as vouched for by his signature to the plaintiff's deed of sale.

ORDERED,

That the appeal be dismissed without issuing notice to the respondent.

THE 22D MAY 1848.

No. 13 of 1848.

*Appeal from the decision of Moulvee Mahomed Ibrahim Khan,
Officiating Principal Sudder Ameen, dated 25th March 1848.*

Musst. Heyat-oon-nissa, *or* Beychan, (Plaintiff,) Appellant,
versus

Sheikh Meher Alli, Neyamut Alli, and Illaieybuksh, (Defendants,) Respondents.

CLAIM to recover 3 beegahs, appertaining to 7 beegahs, 10 biswas, decided under Act IV. of 1840, on the 8th October 1842,

out of 15 beegahs of lakhiraj land, situated in mouzah Heybutpoor *oorf* Deywun Beega, pergunnah Sumaie, for the reversal of the said decision, as well as that of the session judge of 19th November 1842, valued at eighteen times the amount of annual rent, and inclusive of usufruct for the years 1250 and 1251, in the aggregate amounting to Company's rupees 128.

The plaintiff declares herself to be the second purchaser of the proprietary rights and titles of Futteh Alli, Musst. Azeymey, and Musst. Rajeyha, as also those of Musstn. Lalun and Ameyrun, and of Kuramut Alli, for his own share by inheritance, and that of Musst. Jeychoo by purchase, certain co-parceners in these lands, through Musst. Kuseymun *oorf* Kuseymee, the first purchaser, and that Futteh Alli, Musst. Azeymey, and Musst. Rajeyha, were the children of the second wife of Hafiz Ahmud Alli *oorf* Burrattee, deceased.

Neyamut Alli and Illaieybuksh, defendants, are the descendants of Musst. Jeychoo, daughter, by the first wife, and they altogether deny the claim set up in the names of Futteh Alli, Musst. Azeymey, and Musst. Rajeyha.

The officiating principal sudder ameen decides that the suit has been irregularly laid; that the claim is dependant, first, on the validity of the title assumed in the names of Futteh Alli, Musst. Azeymey and Musst. Rajeyha, secondly, on that of the purchase by Musst. Kuseymun *oorf* Kuseymee, and thirdly, on that of the plaintiff from Musst. Kuseymun *oorf* Kuseymee. At the same time he goes at length into the merits of the case, and ends by dismissing it with nonsuit.

JUDGMENT.

I concur in the officiating principal sudder ameen's finding, as consistent with the spirit and meaning of the existing regulations, that suits founded on right of inheritance should include the entire claim arising out of the same cause of action, but consider as objectionable so much of his decision as disposes of the merits of a case still open to a re-trial by the tenor of his own decretal order. I therefore refrain from entering on the merits of the case, and restrict myself to upholding the officiating principal sudder ameen's order of nonsuit.

ORDERED,

That the appeal be dismissed without issuing notice to the respondents.

PRESENT : W. ST. QUINTIN, ESQ., ADDITIONAL JUDGE.

THE 6TH MAY 1848.

NO. 21 of 1847.

*Appeal against a decree passed by Moulvée Tuffuzzul Hosein,
Moonsiff of Jehanabad, on the 4th December 1846.*

Pheekun Singh, (Defendant,) Appellant,

versus

Dwarkanath, (Plaintiff,) Respondent.

THIS action was brought on the 1st December 1845, to recover the sum of rupees 50, 3 as., the produce of 3 beegahs 10 kottahs of land in the village of Dhooree, pergunnah Incha.

The plaint sets forth that the plaintiff and defendant are joint farmers of this village, that the defendant's farm extends over 5 annas, 12 d., 3 ryn, and the plaintiff's farm, 10 annas, 7 d., 17 ryn, that the estate is undivided, and that the defendant has appropriated the whole produce of the land in question which he holds in his own cultivation.

The defendant, in reply, pleads that this land is in his sole occupation, and was made over to him by the proprietors as a separate holding in exchange for 5 beegahs 12 cottahs of land he gave up to him, that the plaintiff has appropriated the produce of other undivided land, and has anticipated the defendant's suit against him by instituting this action.

The moonsiff decides that the co-parcenary of these parties is fully proved, and that therefore the allegation on the part of the defendant of a separate and distinct holding is not tenable; that the produce of the whole of the land of the village must be shared with the plaintiff; that as the plaintiff in asking for 20 maunds per beegah has overrated the value of the produce, a decree is passed in his favor for the balance after deducting rupees 25-3.

The defendant, in appeal, urges his former pleas, and attempts to make out that the plaintiff's case is not proved.

JUDGMENT.

It is evident that this land forms part of an undivided estate, which is held in farm jointly by these parties, the produce of each beegah must, therefore, belong to each farmer according to the extent of his farm. I therefore agree with the moonsiff, and confirm the decree, dismissing the appeal with costs, without causing the attendance of the respondent.

THE 9TH MAY 1848.

No. 22 of 1847.

Appeal against a decree passed by Sheikh Kasim Allee, Additional Moonsiff of Behar, on the 3d December 1846.

Bukhoree Sahoo, (Plaintiff,) Appellant,

versus

Musst. Wazun, wife of Syud Zuhoor Allee *alias* Meer Chukun, for herself, and as the guardian of Musst. Nuseer-oon-nissa, heir of Musst. Muhaboob-oon-nissa, and the Government, (Defendants,) Respondents.

THIS suit was instituted on the 21st May 1845, to recover possession in a house in Sahibgunge, (Gyah,) and to set aside a miscellaneous order of the additional judge dated 16th June 1840. Value of suit, rupees 144-4-8; 42-10-8 being the sale price, and rupees 101-10 the balance of house rent.

The plaint sets forth that the plaintiff purchased this house, sold in execution of a decree against Bolakee Pasee; that the deed of sale was signed by the moonsiff; that on taking possession he was opposed by Azhur Allee, the father of Zuhoor Allee, who objected that he had purchased the house at a sale for balances due to the Government from Deepoo and others, the farmers of a toddy mehal; that the moonsiff admitted these objections, as it was proved that Bolakee occupied the house; that the moonsiff's order was reversed, in appeal before the additional judge, since the sale had been made under the orders of the collector; that the house in question belongs to Bolakee, and was bought as his property by the plaintiff.

The Government, in reply, pleads that the right and interest of Deepoo and others in this house, which were pledged as security in the abkaree department, were sold on the 15th April 1835 in satisfaction of Government claims, that the house was not sold in the name of Bolakee, against whom the Government had no claim.

Musst. Wazun, in reply, rests her defence on the reply of the Government, and pleads that, as the boundary of this house is not defined in the plaint, the suit is barred under Regulation XXIII. of 1814 and Regulation X. of 1829, that Bolakee did not urge any objections at the time of the sale.

The moonsiff decides that, as Bolakee did not urge objections to the sale, and as the plaintiff produces no proof beyond the miscellaneous decision of the moonsiff, which was reversed by the additional judge, and since this action is not cognizable as long as the sale made by the collector is binding, the plaintiff's claim is dismissed.

In appeal, the plaintiff urges that, as no notice was given when this house was pledged as security in the collector's office, Bolakee could not have objected to it.

JUDGMENT.

It is proved, and indeed the appellant does not deny it, that this house was sold for balances due to Government from Deepoo and others, toddy farmers. I therefore agree with the moonsiff that, as long as the sale is binding, the appellant's claim is not cognizable, and uphold the decree, dismissing the appeal with costs, without issuing notice for the attendance of the respondents.

THE 10TH MAY 1848.

No. 23 of 1847.

Appeal against a decree passed by Syud Mahomed Allee Ushruff, Moonsiff of Behar, on the 14th December 1846.

Girdharee Singh, Pran Singh, Motee Singh, and Kheerun Singh, Defendants, (Appellants,) in the suit of Baboo Hurunggee Singh and Baboo Bhakaree Singh, (Plaintiffs,) Respondents,

versus

Meer Wuzeer Allee, son, and Musst. Jeeun, daughter, of the first wife, and Musst. Sunjeedah Begum the second wife, heirs of Meer Husun Allee, deceased, Girdharee Singh, Pran Singh, Motee Singh, Kheerun Singh, Futeh Muhto, Meer Wilayut Hosein, Meer Irshad Hosein, sons, and Musst. Azeet-oon-nissa, daughter, heirs of Meer Yumun Imam, deceased, Meer Wajid Hosein, Mussts. Kureem-oon-nissa, Zeb-oon-nissa, Wullee-oon-nissa, Nujm-oon-nissa, Zeb-oon-nissa second, Hajee Beegum, Musst. Mobaruk-oon-nissa, wife and heir of Meer Kulub Hosein, deceased, (Defendants.)

THIS suit was instituted on the 25th July 1845, to recover the sum of rupees 136-2-4, being the amount, principal and interest, paid as Government revenue for the village of Gobindpoor Nirroot, according to collectory receipts.

The plaint sets forth that a settlement was made for this village with the plaintiffs and defendants at a jumma of rupees 189-8-10, and that the plaintiffs paid the whole of the rent due from 1248 up to 1251 Fusily, that rupees 109-7-2 is the sum thus paid in excess of the plaintiffs' share, and the defendants refuse to make it good.

Girdharee Singh and the other defendants (the appellants in this case) plead, in reply, that they have paid rupees 3, 3 annas, 4 pie, in excess of the revenue due from their share, and that the plaintiffs must look to the other shareholders for any excess of revenue paid up by them.

Futeh Muhto, defendant, makes a similar reply, and pleads that he has paid 9 annas in excess of his share.

Meer Wuzeer Allee, defendant, pleads that the plaintiff, Bhakaree Singh, collected the rents in his share up to 1251 Fusily, having agreed to pay the Government revenue and make over to the defendants any surplus proceeds; that in 1252, the defendant

took upon himself the management of his share, and paid in the Government revenue, for which he holds receipts.

The moonsiff decides that the plaintiffs' claim is good against Wuzeer Allee, because he acknowledges not to have paid his share of the revenue, and that any claim he may have against Bhekaree is not cognizable in this suit; that Futeh Muhto proves by his collectory receipts that he has paid in excess of his ratable share of the revenue; that Girdharee Singh and others have no receipts to prove their payment, and the memorandum of payment produced by them is not sufficient proof of payment on their part: a decree is therefore passed in favor of the plaintiffs against all the defendants except Futeh Muhto—the action against Musstn. Jeeun and Sunjeedah having been withdrawn, they are also excepted from responsibility.

The defendants, Girdharee Singh and others, appeal, on the plea that, if the moonsiff was not satisfied with the memorandum of payment produced by them, he ought to have agreed to their verbal request to be allowed two days to produce their collectory receipts.

JUDGMENT.

I think the moonsiff has been too hasty in deciding this case. If he was dissatisfied with the memorandum produced by the appellants, he ought to have given them an opportunity to support the document by producing the receipts for rent received from the collector. The appellants have now produced these receipts, which appear to be good and valid documents, and to tally with the memorandum. I therefore reverse the decree, and direct a review of judgment, and the moonsiff will be pleased to take into consideration these documents inasmuch as these appellants are concerned, and decide the case accordingly. The usual order will issue for a refund of the stamp value.

THE 11TH MAY 1848.

No. 16 of 1847.

Appeal against a decree passed by Moulvee Mahomed Ibrahim, Principal Sudder Ameen of Behar, on the 26th July 1847.

Thakoor Tewary, (Plaintiff,) Appellant,

versus

The Government, Sooliman Khan, Kessur Bharthee, and Futeh Nurain, Government farmers, and Chutoor Muhto, Musst. Himmut-oon-nissa, and Tekayat Bonead Singh, (Defendants,) Respondents.

THIS suit was instituted on the 22d December 1843, to obtain possession in 400 beegahs, 9 biswas, and 5 dhoons of land appertaining to the village of Bahadoorpoor Mahunder, to alter a survey

boundary, and to recover mesne profits accruing between the years 1248 and 1250 Fusly. Suit valued at rupees 4,478-15-5-16.

The plaint sets forth that the village of Bahadoorpoor was occupied by one Bahadoor Allee with a ruqbah of 1900 beegahs; that in 1204 it was sold for arrears of Government revenue; that the sale was reversed and the estate restored in all its integrity to Bahadoor Allee; that in 1220 a party of officials was ordered by the collector to mark out the boundaries of Dhumnee and other adjacent villages; that they allotted the land now claimed, with all the trees on it, to the villages of Dhumnee, &c.; that Bahadoor Allee objected to this, and his petition was sent by the court to the collector, who, without further investigation, upheld the acts of his subordinates, referring Bahadoor Allee to a regular suit; that an action was brought accordingly, and the then principal sudder ameen ruled the land to Bahadoor Allee; that, on an appeal on the part of the Government, the then additional judge reversed the decree, and ordered a review of judgment, directing the principal sudder ameen to visit and inspect the lands in dispute; that the then principal sudder ameen did visit the place, but died without having recorded his decision; that whilst this suit was pending Bahadoor Allee mortgaged the estate to the plaintiff, who subsequently bought it out and out from Himmutoon-nissa, the daughter and heiress of Bahadoor Allee; that in this way the plaintiff stands in the position of Bahadoor Allee; that after this, Moulvee Hedait Allee, the principal sudder ameen, visited and mapped the disputed spot, and on the 24th December 1842 nonsuited the then plaintiff, on the plea that the present claimant was the real plaintiff in the case, hence the present action; that in 1196 Fusly these lands were settled as part and parcel of Bahadoorpoor, and up to 1220 Fusly was in the undisturbed occupation of the proprietor of that estate.

The Government, in reply, pleads that the plaintiff is only the purchaser of the land actually occupied by Bahadoor Allee, to whom the land now claimed never belonged; that when the sale was reversed, Bahadoor Allee was put in possession of only 1,000 beegahs; that his petition to be put in possession according to the ketabee ruqbah was not listened to; that in the former suit, Bahadoor Allee only claimed 300 beegahs; that the professional survey was effected in the presence of both parties without objection having been urged.

The defendant, Bonead Singh, in reply, rests his defence on the pleas urged by the Government, and adds that at the time the plaintiff made this purchase Mohunpoor was not in his occupation, so that he is not actionable.

The defendant, Futeh Nurain, in reply, pleads that the suit is irregular, since the plaint does not detail how much of the land claimed is in the occupation of each of the defendants, nor does it state the parties who year by year appropriated the usufruct.

The principal sudder ameen decides that, at the time the plaintiff made this purchase, Bahadoor Allee only occupied 1,000 beegahs, his claim, therefore, does not extend beyond that the plaintiff has no proof that Bahadoor Allee, after the sale, did get possession in excess of this ruqbah; that from a petition presented by Bahadoor Allee after the sale it may be inferred that 1,000 beegahs was the actual extent of this estate; that the ketabee ruqbah is no proof, since that is a variable and uncertain record. The claim of the plaintiff, is therefore, dismissed.

In appeal, the plaintiff urges that his case is made out on the evidence and the map drawn by the principal sudder ameen, Moulvee Hedait Allee Khan, on the occasion of his inspection of the lands in dispute.

JUDGMENT.

The principal sudder ameen has lost sight of the real merits of this case. It is on evidence that whatever were the rights and interests of Bahadoor Allee, and after him of Musst. Himmutoon-nissa, were transferred to the appellant; it therefore remains to be decided what these rights and interests were, or, in other words, whether the boundary now detailed in the plaint was the actual boundary of Bahadoorpoor or not. The ruqbah of the estate, as sold to the appellant, is not the question. The whole estate was transferred at the time this dispute was pending. The appellant stands in the place of Bahadoor Allee, and his claim to these lands, of which Bahadoor Allee declares himself to have been dispossessed by the act of the collector's officials, must be enquired into and decided upon. The principal sudder ameen will be pleased to reconsider his judgment in this case with reference to the above remarks, and, if it is required, he will visit this disputed spot. I therefore reverse this decree, and return the case for re-investigation; and the usual order will issue for a refund of the stamp value.

THE 12TH MAY 1848.

No. 24 of 1847.

Appeal against a decree passed by Moulvee Fureedoodeen, Moonsiff of Aurungabad, on the 8th December 1846.

Nurain Sahoo, Plaintiff, (Appellant,)

versus

Balgobind, and Musst. Juy Kooner, wife of Doolarchund,
(Defendants,) Respondents.

Gunput Sahoo, (Claimant,) Objector.

THIS suit is similar to the appeal No. 25. In this the plaintiff claims to have his name registered as proprietor of a 3 pie share of Mujahidpoor, by right of purchase from the defendant, under a deed of sale dated 24th February 1845. Suit valued at rupees 13-3-2.

This suit was decided on the same date and by the same authority as No. 25, the following suit. In this case, the moonsiff rules that the evidence proves that the defendants' share was only 2 pie, and a decree is passed accordingly in favor of the plaintiff's being registered as proprietor to that extent.

The plaintiff appeals, on the pleas that his claim is good for the 3 pie share, and that the moonsiff's rule, that the decree was not evidence against the claimant, Gunput Sahoo, is unjust to appellant.

JUDGMENT.

For the reasons stated in the suit No. 25, to which I add my opinion, that the moonsiff's provision as regards the claimant, Gunput Sahoo, is just and proper, I uphold the moonsiff's decree in this case, and dismiss the appeal with costs, without issuing notice for the attendance of the respondents.

THE 12TH MAY 1848.

No. 25 of 1847.

Appeal against a decree passed by Moulvee Fureedooddeen, Moonsiff of Aurungabad, on the 8th December 1846.

Gunput Sahoo, (Claimant,) Appellant, in the suit of Nurain Sahoo,
Plaintiff,
versus

Lala Goordeal Singh and Bhyroodeal Singh, Defendants.

THIS suit was instituted on the 18th September 1845, to enter the plaintiff's name in the collector's books as proprietor of 5 annas in mouzah Mujahidpore. Suit valued at rupees 87.

The plaint sets forth that this share in this estate was sold by the defendants to the plaintiff, under a deed of sale executed on the 25th Bysack 1252 Fusly, that the plaintiff got possession, but was opposed by the defendants on his application for a mutation of names in the collector's books.

The defendants admit the sale to the plaintiff.

Gunput Sahoo objects to the suit, and claims the property in question as his, by right of purchase made by him, on the 25th May 1843, at a public sale under decree of court, when it was sold as the rights and interests of Moorut Lal.

The former moonsiff of Aurungabad, Zynoolabdeen, passed a decree in favor of the plaintiff, on the ground that the defendant admitted the sale of the 5 annas' share. This decree was reversed in appeal before the then additional judge, Mr. J. W. Templer, who returned the case to the moonsiff for re-trial, with directions that he should carry into effect the provisions of Section 6, Clause 4, Regulation V. of 1831, and, after receiving the evidence tendered by the parties, decide on the merits.

This was done, and the present moonsiff records his decision to the effect that it is proved, on respectable evidence, that this share did belong to the defendants, and they admit the sale to plaintiff, that the claim of appellant, who is a third party, is not cognizable in this suit, but that the decree is not to be any proof against any claims he may prefer to the estate in question : a decree is therefore passed in favor of the plaintiff.

Against this decree, Gunput Sahoo, claimant, appeals on the plea that the shareholders, on whose evidence the moonsiff has passed this decree in favor of the plaintiff, are concerned in the conspiracy against him.

JUDGMENT.

The appellant claims to have purchased the rights and interests of Moorut Lal, in this estate. If any part of these rights are infringed upon by this admitted sale between the plaintiff and the defendants, he has his remedy in a regular suit : the question cannot be tried in the present suit. I therefore uphold the moonsiff's decree, and dismiss the appeal with costs, without issuing notice for the attendance of either of the respondents.

THE 12TH MAY 1848.

No. 26 of 1847.

Appeal against a decree passed by Moulvee Fureedooddeen, Moonsiff of Aurungabad, on the 8th December 1846.

Gunput Sahoo and Toolseeram, (Claimants,) Appellants, in the suit of Nurain Sahoo, Plaintiff,

versus

Lala Balgobind and Musst. Juy Kooner, wife of Doolarchund, Defendants.

THIS suit is similar to the preceding one. In this the plaintiff claims to have his name registered as proprietor of 3 pie share of mouzah Mujahidpoor, by right of purchase from the defendant, under a deed of sale dated 24th February 1845. Suit valued at rupees 13-3-2.

In this case the parties rest their claims on the pleas urged in No. 25. The moonsiff passes a similar decree, and the appellant objects on similar grounds.

JUDGMENT.

For the reasons stated in case No. 25, I uphold the decree passed in this case and dismiss the appeal with costs, without causing the attendance of the respondents.

THE 12TH MAY 1848.

No. 27 of 1847.

Appeal against a decree passed by Moulvee Fureedoodcen, Moonsiff of Aurungabad, on the 8th December 1846.

Gunput Sahoo and Toolseeram, (Claimants,) Appellants, in the case of Nurain Sahoo, Plaintiff,

versus

Lala Surdharam, Defendant.

THIS suit is similar to the preceding one. In this the plaintiff claims to have his name registered as proprietor of 1 pie share of Mujahidpoor, by right of purchase from the defendant, under a deed of sale dated 2d Phagoon 1252 Fusly. Suit valued at rupees 4-6-4-16.

In this case the parties rest their claims on the pleas urged in No. 25. The moonsiff passes the same order, and the appeal is preferred on similar grounds.

JUDGMENT.

For the reasons stated in case No. 25, I uphold the decree passed in this case, and dismiss the appeal with costs, without causing the attendance of the respondents.

THE 12TH MAY 1848.

No. 28 of 1847.

Appeal against a decree passed by Moulvee Mahomed Fureedoodcen, Moonsiff of Aurungabad, on the 8th December 1846.

Gunput Sahoo and Toolseeram, (Claimants,) Appellants, in the case of Nurain Sahoo, Plaintiff,

versus

Lala Surdharam, Defendant.

THIS suit is similar to the preceding one. In this the plaintiff claims to have his name registered as proprietor of 1 anna share of mouzah Mujahidpoor by right of purchase from the defendant, under a deed of sale dated 2d Phagoon 1252 Fusly. Suit valued at rupees 17-9-7-4.

JUDGMENT.

For the reasons stated in case No. 25, I uphold the decree passed in this case, and dismiss the appeal with costs, without causing the attendance of the respondents.

THE 16TH MAY 1848.

No. 29 of 1847.

Appeal against a decree passed by Moulvee Fureedoodeen, Moonsiff of Aurungabad, on the 7th December 1846.

Heeroo Singh, (one of the Defendants,) Appellant, in the suit of
Musst. Busuntee, (Plaintiff,) Respondent,

versus



Heeroo Singh, Hurlal Singh, Ramdeal Singh, Kunhya Singh, Balagobind Singh, and Dhurumnath Singh, (Defendants.)

THIS suit was instituted on the 2d December 1844, to set aside an illegal attachment and release grain valued at rupees 296, 13 annas, 6 pie.

The plaint sets forth that the village of Mullookah Beegah was decreed in equal shares to Gholam Allee Khan and Musst. Raj Kullee; that Gholam Allee Khan gave half of his holding in mokurruree to Ramdeal Sahoo, the plaintiff's husband, and sold the balance out and out to the plaintiff herself; that Musst. Raj Kullee sold her share to the defendants, Kunhya Singh, Balgobind Singh, and Dhurumnath Singh, who took an advance of rupees 412, 8 annas, from the plaintiff, and granted her a lease of their share from 1252 up to 1258 Fusly; that the plaintiff accordingly got possession; that in order to damage the advance claim, the defendants, Kunhya Singh, Balgobind Singh, and Dhurumnath Singh, in collusion with Heeroo Singh, as the farmer of 8 annas, attached 200 maunds of grain produced in 1252, the proprietor's share, on the plea of balances of rent due from Hurlal Singh, as sub-tenant, and Ramdeal Singh, his surety, accruing in 1251 Fusly.

Balgobind Singh and Baboo Dhurumnath Singh, in reply, plead that, prior to the decree allotting half this estate to Musst. Raj Kullee, Heeroo Singh farmed the whole estate on a lease from 1249 up to 1257 Fusly; that since the decree, Heeroo Singh has only farmed 8 annas; that when the share of Raj Kullee was purchased by the defendants jointly with the defendant Kunhya Singh, the farm was confirmed to Heeroo Singh; that the defendants took an advance of 400 rupees, bearing interest at $12\frac{1}{2}$ per cent., from the husband of the plaintiff, and granted him a lease of this share, giving an order that Heeroo Singh's rents should be paid to him; that, therefore, this action against the defendants will not lie; that the plaintiff and the farmer are making a collusive attempt to create a balance and bring

the estate to auction; that if the tenant did attach the property of the sub-tenant, the defendants are in no way responsible.

Heeroo Singh, in his reply, supports these allegations for the defence, and adds that he granted a sub-lease to Hurlal Singh, on the security of Ramdeal Singh, that the rents were not paid and this attachment was taken out against them, that the plaintiff has no claim on the property so attached, that beyond taking the rents the plaintiff has no claim.

Hurlal Singh, in his reply, supports Heeroo Singh's representation, and pleads that a balance was due from him to Heeroo Singh, which fully warranted the attachment.

Kunhya Singh, defendant, replies that his share, purchased in conjunction with Balgobind Singh and Dhurumnath Singh, was leased to the plaintiff from 1252 up to 1258 Fusly, upon an advance, and until that advance is made good he has nothing to do with the estate, that he was no party to the attachment, that Heeroo Singh is not the farmer, nor is Hurlal Singh the under-tenant, that he sold 3 annas of the estate to Dhurumnath Singh.

Dhurumnath Singh, claimant, declares that he holds 3 annas of this property by right of purchase, under a deed of sale executed in his favor by Kunhya Singh, dated 12th May 1845.

The former moonsiff nonsuited the plaintiff, on the plea that the claim was cognizable by the revenue authorities. This was overruled in appeal before the judge, who directed the case to be investigated and decided on its merits.

The decision of the present moonsiff is, that the point to be decided in the case is, whether Heeroo Singh is the farmer under the lease alleged to have been granted to him by the former proprietor, Musst. Raj Kullee, and to establish this point he can produce no proof; the farming rights of the plaintiff are admitted by the defendants, and the statement of the ameen shows that occupation vested in her: a decree is therefore passed in her favor.

In appeal, the defendant, Heeroo Singh, pleads as before, and attempts to shew that his right to this farm is fully established.

JUDGMENT.

I see no reason to disturb this decree. The appellant has not a particle of proof to shew his title to this farm. At the time he alleges that he received the lease of the whole estate, Raj Kullee was out of possession, and he has nothing to shew that, when the title of Raj Kullee to half of the estate was established by a decree of court, she confirmed the lease of her share to the appellant. I therefore uphold the moonsiff's decree, and dismiss the appeal with costs, without issuing notice for the attendance of the respondent.

THE 26TH MAY 1848.

No. 19 of 1847.

Appeal against a decree of Syud Tuffuzzul Hosein, Sudder Ameen of Behar, on the 20th April 1847.

Roy Gunga Bishun, (Defendant,) Appellant, in the suit of Musst. Oomdah, wife of Moulvee Juwad Allee, deceased, (Plaintiff,) Respondent,

versus

Roy Gunga Bishun and Shewun Lal, (Defendants.)

THIS suit was instituted on the 16th November 1844, to set aside a mortgage deed dated 19th Assin 1250 Fusly; valued at rupees 401.

The plaint is that Moulvee Juwad Allee mortgaged 148 beegahs 3 biswas of land in the village of Punditpore to Roy Gunga Kishun for 400 rupees; that as only 150 rupees of the money was paid over at the time the deed was drawn up, the document was not sealed by the cazee, but made over to Shewun Lal, a servant of Gunga Kishun, to be held by him, till the mortgage money should be paid up; that the title deeds of the estate were made over to Gunga Kishun, who gave a writing, in which he covenanted to pay the balance of 250 rupees, and redeem the mortgage deed from the trust of Shewun Lal; that Gunga Kishun did not pay the balance, and wanted the plaintiff to return the 150 rupees; that on this, the plaintiff paid 97 rupees to Shewun Lal, who agreed, on his paying the balance of rupees 53, to procure and return all the documents concerned in the transaction; that subsequently a quarrel ensued between the plaintiff and Shewun Lal, who then made over the mortgage deed to Gunga Kishun, and he took out a process of foreclosure; that the plaintiff urged objections but the deed could not be set aside without a regular suit; that the plaintiff now wishes to pay the 53 rupees, and cancel the mortgage.

Roy Gunga Bishun, in his reply, denies all the allegations of the plaintiff, and pleads that the mortgage was completed and foreclosed under Regulation XVII. of 1806, without any objections being urged by the plaintiff; that as the plaintiff admits that 53 rupees out of the 150 were not paid back within a year after the foreclosure, this action on his own showing falls to the ground.

Shewun Lal, in his reply, denies having been in any way concerned in this transaction, and pleads in support of Gunga Bishun's representation.

The sudder ameen decides that, as the deed of mortgage declares these parties to have entered into this transaction in the presence of the cazee, his seal is necessary to validate the deed; that the defen-

dant could not have completed the mortgage by payment of the balance required from him; that the defendants' witnesses are of low caste and ignorant, and the *ipse dixit* of the defendant, that he did pay up the mortgage money, is not enough to prove the allegation; that the plea of the defendant, that the plaintiff did not object prior to the foreclosure, is untenable, since the completion of the mortgage is open to a regular suit; that the allegation of the plaintiff, that he paid 97 rupees back is not proved by evidence, oral or documentary; a decree is, therefore, passed, requiring the plaintiff to pay 150 rupees, and setting aside the mortgage, each party being answerable for their own expenses, and declaring Shewun Lal exempted from responsibility.

Against this decree, the defendant, Gunga Kishun, institutes an appeal, in which he dwells strongly upon the fact of the plaintiff's not having urged objections at the time of the foreclosure, and therefore being barred from this action by Section 8, Regulation XVII. of 1806, Construction No. 263, dated 23d January 1817, and Circular Order dated 9th April of the same year.

JUDGMENT.

The respondent takes no notice of the summons served upon him to defend his case. The petition for a foreclosure of this mortgage was presented on the 9th November 1843, when notice was served on the respondent, who does not appear to have urged any objections till the institution of this suit on the 16th November 1844. The mortgage was finally closed and the conditional sale became absolute under Regulation XVII. of 1806, Section 8, *before* this action was brought to set aside the mortgage. I therefore reverse this decree, and dismiss the claim with all costs on the respondent.

THE 26TH MAY 1848.

No. 250 of 1846.

Appeals against a decree passed by Syud Sheikh Kasim Allee, Additional Moonsiff of Gyah, on the 26th November 1846.

Nunhoo Sahoo, (Defendant,) Appellant,

No. 3 of 1847. .

Luckput Rae, (Defendant,) Appellant, in the suit of Sheikh Hingun, (Plaintiff,) Respondent,

versus

Lala Luckput Rae, Motee Sahoo, and after him Nunhoo Sahoo, (Defendants.)

THIS suit was instituted on the 10th May 1845, to recover the sum of rupees 44, the value of fire-works due on a rookah, dated 9th Maug 1252 Fusly.

The plaintiff sets forth that the plaintiff supplied Luckput Rae with 52 rupees' worth of fire-works and gunpowder, that 7 rupees was paid by Motee Sahoo in behalf of Luckput Rae, that Luckput Rae granted an order on Motec Sahoo for 44 rupees in liquidation of the debt, which was accepted by Motec Sahoo, but has never been cashed.

The defendant, Motee Sahoo, denies all claim on him, and also the allegation of his having paid 7 rupees, and pleads that Luckput Rae has no claim against him.

The defendant, Luckput Rae, denies that the plaintiff has a claim against him, since he granted an order for payment for these fire-works on Motee Sahoo, who was indebted to him a balance due on an amanutnameh dated 15th July 1845.

The moonsiff decides that the claim of the plaintiff is proved on evidence, as is also the payment on the part of Motee Sahoo of rupees 7 : a decree is, therefore, passed against both the defendants collectively.

Against this decree both defendants appeal. Motec Sahoo objects to being held in any way responsible, and Luckput Rae maintains that the decree ought to be given against Motec Sahoo alone.

JUDGMENT.

This decree must be amended, and Motec Sahoo and after him Nunhoo Sahoo, appellant, must be exempted from all liability. The validity of the claim of Luckput Rae against Motec Sahoo, which the moonsiff recognizes in this decree, cannot be decided in this case. Luckput Rae bought the fire-works, and he must pay for them. The decree is therefore altered accordingly; the respondent in No. 250 pay all expenses of the appellants and Luckput Rae held responsible for all expenses in case No. 3.

THE 27TH MAY 1848.

No. 36 of 1847.

Appeal against a decree passed by Syud Tuffuzzul Hoscin, Sudder Ameen of Behar, on the 27th May 1847.

Sheik Uthur Hosein and Wajid Hosein, (Defendants,) Appellants,
in the suit of Khurukdharee Singh *alias* Monoruth Singh, (Plaintiff,) Respondent,

versus

Sheikh Uthur Hosein, Wajid Hosein, Gundrup Hazaree, Soobuns Hazaree, Monohur Hazaree, Baluk Hazaree, Futeh Hazaree, and Khemajeet Hazaree, Defendants.

THIS suit was instituted on the 10th September 1846, to recover the sum of rupees 498, being the principal and interest of money

paid into the collectory, as the revenue of the village of Nowadih, for 1252 Fusly.

The plaint sets forth that the whole of this estate was leased by the defendants to the plaintiff, from 1253 to 1263 Fusly, for an advance of 2,000 rupees, without interest, at a jumma of 971 rupees annually, on a deed registered and dated 8th August 1845, that prior to this lease, a balance was due on the estate from the defendants, for 1252 Fusly, amounting to 446 rupees, which was paid by the plaintiff to save the estate from auction, and for which he holds collectory receipts, dated 26th and 27th September.

The defendants, who appeal this case, declare, in reply, that the plaintiff took the money from their elder brother, Sheikh Tueboot Touheed, and paid it into the collectory, which is proved by a rookah, dated 4th Assin 1253 Fusly, written by the plaintiff.

The other defendants, in reply, admit the validity of the plaintiff's claim, and plead that Wajid Hosein and Sheikh Tueboot Touheed never paid them their shares of the advance, but wrote to say that their portions would be paid in as their quota of the Government revenue.

The sudder ameen is of opinion that this is an attempt on the part of the defendants to defraud the plaintiff, because on the 6th February, proofs were required from the defendants in eight days, and after four months had elapsed the defendants, Uthur Hosein and Wajid Hosein, produced two notes on plain paper and a list of witnesses, with a request to have the notes stamped; that this is a pretence to create delay; that these documents will not nullify collectory receipts; that it is improbable that this money should have been paid to the plaintiff, without some document that the rookah is returned. Since the court is in no way satisfied with the allegations of the defendant, and the collectory receipts and the evidence of the plaintiff's witnesses clearly prove this claim, a decree is therefore passed in favor of the plaintiff.

In appeal, the defendants urge their right to have the rookah stamped, the evidence of their witnesses taken, and the point decided, whether they paid this balance of revenue to the plaintiff or not.

JUDGMENT.

The sudder ameen has lost sight of the merits³ of this case. The only point requiring decision is, whether the appellants paid this balance of revenue to the respondent or not. It is evident that the money was paid into the collectory by the respondent: this is admitted by the appellants, and the rookah is in no way intended to nullify the collectory receipts. I therefore reverse this decree, and return the case for re-investigation: the sudder ameen will be pleased to confine himself to the investigation of the point alluded

to above, and, after taking proofs from the appellants, will decide the case accordingly. The usual order of a refund of the stamp value will issue.

THE 31ST MAY 1848.

No. 30 of 1847.

Appeal against a decree passed by Moulvee Fureedooddeen, Moonsiff of Aurungabad, on the 12th December 1846.

Musst. Uchraj Kooner, wife, and Aukhouree Jye Purkash, the eldest son of Nagurchund, deceased, (Defendants,) Appellants,

versus

Aukhouree Raj Koomar, (Plaintiff,) Respondent.

THIS suit was instituted on the 26th December 1845, to recover the sum of rupees 182-4-6, being principal and interest due on the value of a tiluk or betrothed dues, consisting of money and chattels.

The plaint sets forth that the plaintiff betrothed his daughter to one Bholah Purkash, the son of the defendant, Uchraj Kooner, to whom he sent a tiluk, valued at 165 rupees, that between the betrothal, and the marriage Bholah Purkash died, that this suit is instituted to cover the value of the tiluk, after deducting 16 rupees as the fee usually paid on the part of the female in transactions of this nature.

The defendants, in reply, plead that the tiluk is not claimable if, as was the case in this instance, the betrothal has been performed according to custom in the presence of brahmins and relatives of the parties, that only 100 rupees was the actual value of the tiluk, that a bywastah from the pundit will readily settle the question at issue.

The bywastah of the pundit leaves no doubt on the mind of the moonsiff as to the liability of the defendants to return the tiluk. The actual value remains to be considered. This the evidence does not prove to have exceeded 100 rupees. A decree is therefore passed for this sum without interest, after deducting 16 rupees, which the plaintiff acknowledges to be the amount of fee due to the defendants.

In appeal against this decree, the defendants urge that the bywastah is incorrect, since it is not the custom amongst people of his caste for the parent of the female to present the tiluk in person to the parent of the male.

JUDGMENT.

The bywastah of the pundit declares that when the tiluk is given by the hand of the father of the daughter to the boy, and the boy

accepts it and consents to the engagement, the tiluk is not returnable ; but if the father of the girl sends the tiluk by the hand of another to the parent or the elder brother of the male, it is to be returned in the event of the death of the male before marriage. In this case, both sides agree that the tiluk was sent by the hand of a third party ; therefore, according to the second clause of the bywas-tah, which applies here, the respondent's claim is a good one. The decree is therefore upheld, and the appeal dismissed with costs, without issuing notice for the attendance of the respondent.

ZILLAH BHAUGULPORE.

PRESENT: W. S. ALEXANDER, Esq., JUDGE.

THE 1ST MAY 1848.

Case No. 2 of 1847.

*Appeal from the decision of Baboo Nocoorchunder Chowdry, Sudder
Ameen of Bhaugulpore.*

Mohunram Bhuggut, (Defendant,) Appellant,

versus

Bhyrub Dutt Jha, (Plaintiff,) Respondent.

Abdoolah Khan—Vakeel of Appellant.

CLAIM, Company's rupees 94-8, on promissory note, instituted 3d December 1845, decided 24th November 1846.

Plaintiff brought this action to obtain from defendant payment on a promissory note for Sicca rupees 99-8, bearing date the 18th Bhadoon 1251 F. S. Defendant had paid 25 rupees, but refused to make good the balance.

Defendant pleaded, in his answer, that he never borrowed the amount claimed. He had had dealings with plaintiff's father, and took a lease of certain ghats giving a bond in anticipation of payment for rupees 12-8.

The sudder ameen, considering the claim fully proved, and the defendant to have failed in establishing his pleas, decreed the full amount in plaintiff's favor.

The defendant preferred an appeal against this decision on general grounds.

JUDGMENT.

After a perusal of the evidence adduced by both parties, I see no grounds for interfering with the decision of the lower court, which is accordingly hereby affirmed with costs.

THE 1ST MAY 1848.

Case No. 67 of 1846.

Appeal from the decision of Moulvee Allee Buksh, Sudder Ameen of Monghyr.

Musst. Endah Kowuree, (Defendant,) Appellant,

versus

Hunooman Singh and another, (Plaintiffs,) Respondents.

Abdoolah Khan—Vakeel of Appellant.

CLAIM, rupees 118-5-5, rent of land, instituted 12th December 1845, decided 21st November 1846.

This suit was instituted by plaintiff to recover from defendant (appellant) Company's rupees 118, 5 annas, 5 pie, rent, with interest, on 25 beegahs of land, which the said defendant had obtained from plaintiff under a summary decision of the collector's, date not stated. The sudder ameen has rescinded the summary decision and given a decree for the recovery of the amount in plaintiff's favor, the present decision being founded on his decision No. 115 for 1845, in which the claim of defendant for possession of the said 25 beegahs of land was dismissed. As the judgment in that suit was reversed by this court on the 6th April 1848, appeal No. 62 of 1846, and the case returned for re-investigation,

ORDERED,

That this appeal be decreed, and this case also be returned, to be disposed of together with the suit for claim for possession. The usual order with respect to stamp fees.

THE 6TH MAY 1848.

Case No. 17 of 1847.

Appeal from the decision of Moulvee Allee Buksh, Sudder Ameen of Monghyr.

Nirbye Singh, (Defendant,) Appellant,

versus

Lutchmee Nerayun, (Plaintiff,) Respondent.

Girdharree Lall and Zukeeooddeen Ahmed—Vakeels of Appellant.

INSTITUTED 12th September 1846, decided 16th April 1847.

This was an action to recover from defendants Company's rupees 327-5-3, under the following circumstances:—

Plaintiff became security for the due observance of the terms of a farming contract entered into by the defendants, Nirbye Singh and Omeraow Singh. These parties failing to make good the stipulated rent for the year 1252 Fusly, a summary suit was

commenced by the lessor ; and a decree being obtained, he put it into execution and arrested plaintiff, who was compelled to satisfy the same. Plaintiff therefore sues the lessees for the amount.

The sudder ameen decreed the full amount claimed against Nirbye Singh, releasing the other defendant from responsibility, and observing that the plea put forward by Omeraow Singh, of his having relinquished all interest in the farm, was fully borne out by a petition presented on the 31st August 1846 to the collector by the defendant, Nirbye Singh, who therein stated that the rights and interests of Omeraow Singh in the farm had ceased on the termination of 1250 Fusily.

Against so much of the decision as exempted Omeraow Singh from responsibility, an appeal was preferred by his co-defendant, Nirbye Singh, on the grounds that Omeraow Singh had likewise presented a petition to the collector and of a subsequent date to the one alluded to in the sudder ameen's decision, setting forth that he, Omeraow Singh, had by no means relinquished his interests in the farm.

JUDGMENT.

The document to which appellant now refers was not filed in the lower court, nor can he allege any satisfactory reason for the omission except the neglect of his attorney. I see no sufficient grounds, therefore, for returning the suit to the lower court for a rehearing on this point. Ordered accordingly. The costs of this appeal to be discharged by appellant.

THE 11TH MAY 1848.

Case No. 66 of 1846.

Appeal from the decision of Baboo Nocoorchunder Chowdry, Sudder Ameen of Bhaugulpore.

Kheroollah, Ruhum Allee, Tajeer Allee, Gouhur Allee, and Musst. Jeecha, (Defendants,) Appellants,

versus

Habebun Begum, Nummee Begum, and Hosseinee Begum,
(Plaintiffs,) Respondents.

Ramkunhye Ghose—Vakeel of Appellants.

Girdharee Lall—Vakeel of Respondents.

CLAIM, possession of rent-free land, with mesne profits, instituted 22d November 1845, decided 13th December 1846.

Plaintiffs commenced this suit to recover possession of 1 beegah 1 cottah of rent free-land, from which they had been dispossessed by defendants in the Fusly year 1248, on the demise of their father. Plaintiffs sue for possession with mesne profits and interest, rupees 139-14-11.

Defendants answer that the disputed land belongs to Shakerollah Chuk, held by them under a sunnud or grant dated in 1199 F. S.

The sudder ameen observes in his decision that the proprietary right in the land, the subject of the present suit, is clearly proved by the evidence adduced by plaintiffs to have belonged to their ancestors. The document filed by defendants in support of their right is neither registered nor authenticated in any shape ; while on the other hand it appears from a memorandum of the collector, dated 17th March 1817, that the aforementioned land was registered as rent-free by plaintiffs' ancestors. A decree for possession was accordingly given, with mesne profits till date of possession.

Against this decision appellant preferred an appeal, on the grounds that the instrument on which they held was granted in 1199 ; how then could it be registered?

JUDGMENT.

The original instrument (copy only being filed) was called for from the collector's office, when it appeared on inspection to be a deed of gift (hibbanamah,) but how such a document found its way into that office cannot now be ascertained. It possesses neither date of presentation, nor signature of any public officer : the inference to be drawn therefore is, that the instrument is a fraudulent one. Ordered, that the appeal be dismissed, and the decision of the sudder ameen affirmed with all costs to appellants.

THE 11TH MAY 1848.

Case No. 200 of 1847.

Appeal from the decision of Moulvee Furhut Allee, Moonsiff of Soorujgurrah.

Goordial Sahoo, (Defendant,) Appellant,

versus

Jectun Zurgur and Chundee Sahoo, (Plaintiffs,) Respondents.

Abdoolah Khan and Girdharee Lall—Vakeels of Appellant.

Altaff Hossein and Bukhooree Lall—Vakeels of Respondents.

CLAIM, bonded debt, instituted 6th February 1847, decided 7th July 1847.

This was an action on a bond, dated 21st Cheyte 1249 Fussily, and written originally on plain paper, by which defendant bound himself to pay to plaintiffs 10 rupees and make over to them two cows. There had before this existed some transactions between them, and a suit had been instituted. Notwithstanding that circumstance, however, defendant had agreed to refer the case to a punchaet, and the consequence was the settlement of the matter

by giving the bond now under investigation. The defendant answers, that he never gave the bond ; that at the alleged date of its being drawn out, he was not at Bhaugulpore, but at his own house ; moreover, the matter had already been determined by the dismissal of plaintiffs' suit. It was not probable then that he would open the matter again before a punchaet.

The moonsiff observes that, although the original claim had been dismissed in a suit before the court, still the writing of the bond under consideration forms a new cause of action, and it has been proved by the evidence adduced by plaintiffs. He accordingly decreed 31 rupees, 11 annas, 9 pie, 10 krants.

Against this decision, an appeal was preferred, on the grounds that by respondents' own shewing, the bond had been given at Bhaugulpore, and in consideration of a claim dismissed by the court, and of which appellant must have been aware when he assented to refer the matter to a punchaet, but it might be asked, would appellant be such an idiot as to adopt this course? A sunimons was issued on respondents.

JUDGMENT.

On a comparison of dates, the alleged bond was given four days after respondents' claim had been dismissed and the judgment upheld in appeal. Had appellant been at Bhaugulpore, he must have heard that the claim against him had been dismissed. To suppose, then, that he would agree to re-open the case, and refer the matter to a punchaet, and give a bond for a claim declared invalid by the courts, is too extravagant to be entertained for a moment. Ordered, that the appeal be decreed, and the decision of the moonsiff reversed, and that respondents do pay the full costs of both courts.

THE 11TH MAY 1848.

Case No. 201 of 1847.

*Appeal from the decision of Furkul Allee, Moonsiff of
Soorujgurrah.*

Cheddye, (Defendant,) Appellant,
versus

Jeetun Zurgur and another, (Plaintiffs,) Respondents.

THIS case is connected with No. 200 decided by me this day. Appellant, though released from responsibility by the moonsiff, had been charged with rupees 6-2-6, costs. Respondents though summoned have not appeared.

ORDERED,

That the appeal be decreed, and that respondents do pay the said costs, and costs of this appeal.

THE 11TH MAY 1848.

Case No. 231 of 1847.

Appeal from the decision of Moulvee Amjud Allee, Acting Moonsiff of Bhaugulpore.

Toolaram, (Defendant,) Appellant,

versus

Chaytenerain, (Plaintiff,) Respondent.

Lalla Bukhooree Lall—Vakeel of Appellant.

CLAIM, debt on bond, instituted 18th March 1847, decided 12th August 1847.

This was an action on a bond, dated 21st Assin 1253, for Company's rupees 26, and interest accruing thereon, rupees 4-10-5, altogether rupees 30-10-5.

Defendant answers that a bond was given to plaintiff for certain law expenses incurred by defendant's employer, but the same were satisfied, and the account signed by plaintiff is now with defendant's employer. The moonsiff observes that the bond was not given for law expenses, but for cash as proved by the witnesses who verified the same. On the 25th June, defendant was directed to file his proof and produce his witnesses, but he has failed to do so. He accordingly decreed the full amount claimed.

Against this decision an appeal was preferred, on the ground that appellant was ready to file his proof, but the moonsiff decided the case before he had an opportunity of so doing.

JUDGMENT.

Appellant had full time allowed him in the lower court to produce his proof, and summon his witnesses, and I therefore see no reason for interfering with the decision of the lower court: appeal dismissed with costs.

THE 11TH MAY 1848.

Case No. 232 of 1847.

Appeal from the decision of Moulvee Amjud Allee, Acting Moonsiff of Bhaugulpore.

Toolaram, (Defendant,) Appellant,

versus

Cheytenerain, (Plaintiff,) Respondent.

Lalla Bukhooree Lall—Vakeel of Appellant.

CLAIM, debt on bond, instituted 18th March 1847, decided 12th August 1847.

This was a suit between the same parties as in appeal No. 200, and was brought on a bond dated 7th September 1846, for Sicca rupees 100, and interest accruing thereon, rupees 6-7-5, altogether rupees 106-7-5 Sicca, or Company's rupees 113-14-9.

Defendant admits giving the bond on account of his employer's law expences. Plaintiff who is a mookhtar had money lodged with him to conduct cases in court, but he has rendered no account of the same to defendant's employer.

The moonsiff observes that the witnesses to the bond prove that defendant received the full considetation in cash. Defendant was directed, on the 26th June, to file his evidence, but he has failed therein. Decreed for the full amount claimed.

Against this decision an appeal was preferred on similar grounds as in No. 231 case.

JUDGMENT.

Defendant was allowed a reasonable time to adduce any evidence he might have in support of his defence; he failed to do so before the lower court; and even before this court he is not prepared with any documentary evidence, though he states he holds a receipt from respondent. I see no grounds for interfering with the moonsiff's decision. Appeal dismissed with costs.

THE 11TH MAY 1848.

Case No. 237 of 1847.

Appeal from the decision of Moulvee Amjud Allee, Acting Moonsiff of Bhaugulpore.

Musst. Seeta and Fukcera, (Defendants,) Appellants,

versus

Pearee Lall, (Plaintiff,) Respondent.

Ramkunhye Ghose—Vakeel of Appellants.

CLAIM, debt on bond, instituted 13th July 1847, decided 30th August 1847.

Plaintiff brought this action on a bond dated 16th June 1844. After a settlement of a former account defendants wrote the bond for the balance due by them, viz. rupees 38-8 Sicca, interest thereon, rupees 13-5, making rupees 51-5 Sicca, or Company's rupees 54-9.

Defendants, though served with notices to attend, failed to appear. The moonsiff, after hearing evidence to the bond, passed an *ex parte* decree in plaintiff's favor. Against this decision appellants preferred an appeal, on the ground of sickness and infirmities which prevented their appearing before the lower court.

JUDGMENT.

The case appears to have been properly gone into by the lower court, and the objection now brought forward by appellants cannot be deemed a sufficient excuse for not attending through an authorized agent in the lower court. Ordered, that the appeal be dismissed with costs.

THE 16TH MAY 1848.

Case No. 18 of 1847.

Appeal from the decision of Moulvee Allee Buksh, Sudder Ameen of Monghyr.

Musstn. Buxun and Faytun, (Plaintiffs,) Appellants,
versus

Kerpa Roy and others, (Defendants,) Respondents.

Muddun Thakoor—Vakeel of Appellants.

CLAIM, rupees 844-2-10, under a summary decision, instituted 16th December 1844, decided 24th March 1847.

The plaint states that defendants' ancestor took a farming lease of 8 annas of mouzah Dullelpore, from the Fussily year 1237 to 1245. He died in Bysack 1237. A settlement of accounts took place with heirs of farmer for 1237 and 1238, and they agreed to relinquish the lease in 1239 F. S. Subsequently, however, they refused to give up possession, and withheld the stipulated rent. Plaintiffs brought a summary suit against them, and obtained, on the 3d January 1833, an award in their favor, which defendants have not thought proper to contest by a regular suit. One of the defendants in the summary suit, Chutun Roy, has deceased, and his heirs refuse to satisfy the award. Plaintiffs therefore sue for amount of said award, Co.'s Rs. 422 0 0

Interest thereon, 422 2 10

844 2 10

The sudder ameen in the first instance decreed to plaintiffs the full amount claimed, because the summary award had never been contested by a regular suit, and had in consequence become final and irreversible; but on appeal the case was remanded by my predecessor, with directions to the sudder ameen to take into consideration the pleas offered by defendants, and decide accordingly. In his second decision, the sudder ameen has dismissed plaintiffs' claim.

Against this decision an appeal has been preferred.

JUDGMENT.

In January 1833, appellants obtained an *ex parte* award against respondents' ancestor and the respondent Ajeet Roy. In the place of executing that award under Section 20, Regulation VIII. of 1831, they have allowed it to lie dormant, and now make it the foundation of a regular suit. In my opinion the course taken by appellants is altogether irregular, for respondents have had neither delivery nor tender of the collector's decision made to them, as directed in Clause 6 of that enactment, consequently respondents have had no opportunity allowed them, of contesting the propriety of that award by a regular suit. It has been ruled moreover by the Superior Court, under Construction No. 1266, that execution of a summary decree for arrears of rent may be taken out within twelve years from the date of such decree, but appellants have not pursued this course though twelve years had not lapsed when they commenced the present action. Appellants have kept respondents in ignorance of the existence of this award against them, and then adduce, as one of the strongest arguments in favor of the claim, that respondents have never contested its justice by a regular suit. As the case was remanded for re-investigation by my predecessor, I shall confirm the decision of the sudder ameen dismissing the claim, though I think the more regular course would have been to nonsuit the plaintiff. Ordered, that appeal be dismissed with costs.

THE 16TH MAY 1848.

Case No. 245 of 1847.

Appeal from the decision of Moulvee Moheerodeen, Moonsiff of Noorgunge.

Jhotoo and Chukoo Munder, (Defendants,) Appellants,
versus

Ram Churn Bhuggut, (Plaintiff,) Respondent.

Ram Kunnye Ghose, Vakeel of Appellants.

CLAIM on note of hand, instituted 19th April 1847, decided 30th August 1847.

This was an action on a note of hand, dated 2d Assin 1248, Fussily, for Company's rupees 19-1-6.

Defendants admitted the validity of the note of hand, but pleaded payment through one Reetoo Roy, the gomashtah of plaintiff, whose acquittance they held.

The moonsiff observes that payment was not made to plaintiff, nor was the return of the note of hand demanded. He accordingly decreed the amount claimed in plaintiffs' favor.

Against this decision an appeal was preferred on the grounds of Construction No. 75, which refers to certain powers vested in the gomastah of banking houses.

JUDGMENT.

The party alluded to by appellants under the name and designation of Reetoo gomastah, appears from the evidence to have been one Rummoo Roy, peada; but under what authority he acted in giving appellants an acquittance does not appear in the evidence adduced by them, and it is scarcely necessary to add that the authority assumed by Rummoo is altogether disallowed by respondent. I see no reason therefore to interfere with the decision of the lower court, which is hereby confirmed with costs of this appeal.

THE 16TH MAY 1848.

Case No. 246 of 1847.

Appeal from the decision of Kistochunder Chowdry, Moonsiff of Rajmehal.

Puddo Sahoo, (Plaintiff,) Appellant,

versus

Chundun Bhuggut, (Defendant,) Respondent.

Bukhoree Lall—Vakeel of Appellant.

CLAIM on contract, instituted 23d July 1847, decided 17th September 1847.

Plaintiff sued defendant on a contract dated 22d Pous 1252 Fussily, which he had not fulfilled, and by which omission he was indebted to plaintiff 19 Sicca rupees and rupees 4-12, interest, making rupees 23-12, Sicca, or Company's rupees 25-3-15.

Defendant, in his answer, denied borrowing money from plaintiff or giving the document in question.

The moonsiff observes that plaintiff brought this suit for money advanced, while the evidence of his witnesses went to shew that no money had been advanced but that the document was drawn out to cover some former balance. He therefore dismissed the claim.

Against this decision an appeal was preferred on general grounds. There was no mention made in the plaint of money advanced. The evidence proved that the document was given by respondent, and it was hard to dismiss the claim for a mere informality.

JUDGMENT.

The plaint makes no mention of money advanced, but the document on which the suit is founded does. Respondent, it is alleged, received 19 Sicca rupees and bound himself to produce a certain amount of grain at a certain rate per maund within a stipulated period. Having failed in so doing, plaintiff brought this action either to recover the amount advanced or to compel the fulfilment of the contract. If the former, he must fail, as no money was advanced; if the latter, he must equally fail, because the contract depended upon an advance which was never made as before shewn. The moonsiff has therefore very properly dismissed the suit, and his decision must be upheld. Order accordingly.

THE 16TH MAY 1848.

Case No. 248 of 1847.

Appeal from the decision of Gungagobind Surbadhikaree, former Moonsiff of Kishengunge.

Torul Mul Fotedar, (Plaintiff,) Appellant,

versus

Hoolas Mundar, (Defendant,) Respondent.

CLAIM on note of hand, instituted 15th June 1847, decided 8th September 1847.

This was an action on a note of hand, bearing date 19th Pous 1229, corresponding with 28th December 1821, given for Sicca rupees 21. Defendant had made two payments in liquidation of the original sum, viz. one on the 29th Asin 1237, of 2 rupees, and another on the 5th Kartick 1245, of 3 rupees.

Defendant did not appear to defend the suit.

The moonsiff dismissed plaintiff's claim as barred by Section 14, Regulation III. of 1793, without further enquiry. Plaintiff has appealed against this decision.

JUDGMENT.

The section of the Regulation quoted by the moonsiff does not apply to the present claim, if the payments alleged by appellant to have been made by respondent took place.

The moonsiff ought to have taken evidence on this point instead of at once dismissing the claim. It further appears from the record that the moonsiff has not observed the provisions of Clause 3, Section 22, Regulation XXIII. of 1814. Ordered, that the appeal be decreed, and the case returned to the present moonsiff to restore to his file and proceed as above indicated. The usual order with regard to stamp fees.

THE 19TH MAY 1848.

Case No. 254 of 1847.

*Appeal from the decision of Moulvee Amjud Allee, Acting Moonsiff
of Bhaugulpore.*

Mr. S. W. Austin, (Defendant,) Appellant,

versus

Radamadhub Banerjee, (Plaintiff,) Respondent.

Moonshee Zukeeodeen, Vakeel of Appellant.

CLAIM on instalment bond, instituted 21st June 1847, decided 15th September 1847.

The plaintiff states that defendant borrowed from plaintiff 100 rupees, and, being unable to repay the debt at once, consented to draw out a paper binding himself to a monthly payment of 5 rupees until the amount due was discharged. This was accordingly done on the 7th March 1847 in the presence of witnesses and defendant attached his name to the document. Defendant, however, had allowed three months to go by without liquidating the monthly instalments as stipulated. Plaintiff sues for 15 rupees, and 3 annas interest.

Defendant denies the transaction, and states that he has claims against plaintiff which he was on the point of pressing when plaintiff forestalled him.

The moonsiff, considering the transaction fully proved by the evidence and the signature of defendant to the bond, decreed the amount claimed.

The defendant has preferred an appeal from this decision, objecting *inter alia* to a witness ignorant of the English language deposing to a signature in that language and pointing it out.

JUDGMENT.

The objection brought forward by appellant is a futile one, for a person may be ignorant of a language and still quite capable of deposing to the fact of a party signing a document, and able moreover to point out the signature, though unable to decipher a letter of it. I see no reason to interfere with the decision of the lower court, which is hereby confirmed. Order accordingly.

THE 22D MAY 1848.

Case No. 255 of 1847.

Appeal from the decision of Moulvee Allee Buksh, Sudder Ameen Moonsiff of Monglyr.

Mr. Wallis, (Plaintiff,) Appellant,
versus

Bunead Munder, (Defendant,) Respondent.

Moonshee Zukeeooddeen Ahmed, Vakeel of Appellant.

CLAIM, damages on contract to grow indigo, instituted 12th August 1846, decided 17th September 1847.

Plaintiff sued defendant, for a breach of contract, under which defendant had bound himself to cultivate 5 beegahs of indigo. The contract bore date the 13th October 1845, and defendant received an advance of 10 rupees.

The defendant, in his answer, denies having entered into an engagement with plaintiff to cultivate indigo.

The sudder ameen moonsiff observes that plaintiff has preferred two claims, one on the contract and another for damages. This is contrary to practice. Besides, plaintiff should have produced the factory book to shew that the money was advanced to defendant. On these grounds he nonsuits the plaintiff. Against this decision, plaintiff has preferred an appeal.

JUDGMENT.

This was a claim founded on an alleged contract entered into by respondent, and under which he bound himself to cultivate indigo, on 5 beegahs of land, or to make good to respondent 10 rupees per beegah, damages for the loss he might sustain in the event of the non-fulfilment of the engagement. There is, therefore, but one claim, that on the contract, to be decided; and the moonsiff should have passed judgment without subjecting plaintiff to a nonsuit. Ordered, that the appeal be decreed, and the case remanded to the sudder ameen moonsiff that he may decide it on its merits.

THE 23D MAY 1848.

Case No. 257 of 1847.

Appeal from the decision of Kistochunder Chowdry, Moonsiff of Rajmehal.

Teclooke Chowdry, (Defendant,) Appellant,
versus

Nerayun Sahoo, (Plaintiff,) Respondent.

CLAIM for money lent, instituted 28th July 1847, decided 17th September 1847.

This was an action to recover from defendant, 30 rupees, principal, and 12 annas, interest, which defendant had borrowed on the 29th Bysack 1254 B. S., but for which no bond had been taken, as defendant had an immediate call for the money, and promised through one Teqa Perosono, to repay the loan on the following day. Defendant had not kept his promise. Plaintiff, accordingly sues both the borrower and his assurance.

The defendant answers that he accepted a loan of 30 rupees from plaintiff, under a stipulation of its re-payment in eight days; the defendant, Teqa Perosono, was present at the time of the transaction, but was not security for the re-payment; the sum lent, however, was re-paid to plaintiff, on the 15th Jeyte 1254, at the zemindary cutcherry.

The moonsiff observes that defendant admits the receipt of the loan, but states that he had repaid the sum lent, on the 15th Jeyte. The witnesses called by defendant are not trustworthy persons, but itinerants, without any settled residence. He, therefore, decrees 30 rupees. An appeal was preferred against this decision, on general grounds.

JUDGMENT.

The only point for consideration rests on the nature of the evidence adduced by defendant to prove the issue tendered in his answer, viz. that he repaid the loan on the 15th Jeyte. Now, without reference to the objections brought against defendant's witnesses by the moonsiff, who was on the spot, I consider their evidence to bear the marks of parties tutored to speak to a certain point. Under these circumstances, I see no reason for interfering with the decision of the lower court. Appeal dismissed with costs, with interest on the aggregate to the day of payment.

THE 23D MAY 1848.

Case No. 268 of 1847.

Appeal from the decision of Kistochunder Chowdhry, Moonsiff of Rajmehal.

Mohun Lall Podar, (Plaintiff,) Appellant,

versus

Domun Sahoo, (Defendant,) Respondent.

Moonshee Zukeeoodeen Ahmed, Vakeel of Appellant.

CLAIM on bond, instituted 9th February 1847, decided 11th September 1847.

Plaintiff sues on a bond, bearing date 22d Bhadoon 1245, by the conditions of which defendant bound himself to repay rupees 8-12, Sicca, for value of grain received on the 15th Bhadoon 1245; if the money was not returned on that date, he would return the full value in mustard seed from the eastward. Defendant did not appear to defend the suit, and the moonsiff proceeded to try it *ex parte*.

The claim in the opinion of the moonsiff cannot be sustained, because certain of the witnesses to the transaction depose to the receipt of cash by the defendant, whereas plaintiff has stated that the consideration was received in grain. He, therefore, dismissed the suit.

Against this decision an appeal was preferred, on the grounds that the witnesses are country people and ignorant and could not speak to the exact nature of the transaction, besides there are other witnesses to the bond not heard by the lower court.

JUDGMENT.

In this case no fault would appear to have been committed by appellant whose plaint corresponds with the conditions of the bond, but two of his witnesses state that the consideration was received by defendant in cash. I do not think that this is enough in itself to invalidate the claim. As there are three other witnesses not yet examined, ordered, that the appeal be decreed, and the case remanded to the moonsiff to hear the evidence of the other witnesses to the document and to decide accordingly. The usual order with regard to stamp fees.

THE 30TH MAY 1848.

Case No. 51 of 1847.

*Appeal from the decision of Baboo Nocoorchunder Chowdry,
Sudder Ameen of Bhaugulpore.*

Mr. D. Oman, (Defendant,) Appellant,

versus

Mr. T. Morell, (Plaintiff,) Respondent.

Syud Altaf Hossein and Ashrut Allee, Vakeels of Appellant.

CLAIM, possession of a house, instituted 4th March 1847, decided September 1847.

Plaintiff brought this suit to obtain possession of a house under the following circumstances as set forth in the plaint. The defendant, Mr. D. Oman, on the 4th September 1844, assigned to his

wife (the other defendant in this suit,) in the shape of gift or grant, two dwelling houses with out-offices, &c., valued at Company's rupees 4,000. A hibbahnamah, or deed of gift, was regularly executed, and registered, and possession was given. The property in short was transferred to Mrs. Oman. On the 15th September 1846, Mrs. Oman sold to plaintiff one of the above-mentioned houses for the sum of Company's rupees 950. The price was paid and the deed of sale executed and registered. Plaintiff likewise received from the vendor as an assurance for the validity of the sale, the deed of gift executed by Mr. Oman in favor of his wife. Notwithstanding his clear title to the premises, the defendant Oman refuses to give plaintiff possession. He accordingly sues for possession of the premises, and as a precautionary measure includes Mrs. Oman as a defendant in the suit.

The defendant, Mr. D. Oman, answers that the Mrs. Oman alluded to, stood at one time to him in the relation of wife, but she had abandoned her home and children, and was living in adultery with a Mr. C. P. Lopes. The deed of sale was executed through the contrivance of Lopes, but a sale under such circumstances could never be pronounced valid. Moreover, possession of the premises has never been relinquished by defendant; such a sale therefore is altogether illegal and barred under the Mahomedan law.

The sudder ameen was of opinion, both from the documents filed by plaintiff and the evidence adduced, that it was clearly shewn that the property in question was transferred to Mrs. Oman under a deed of gift, and on its becoming her property she disposed of it to plaintiff and received for it the full consideration. The same property, on being attached in a case of execution of decree, was released by the court on the objections brought forward by the plaintiff in the present case, who appeared as a third party to oppose the sale, and no regular suit had been instituted to set aside that order. The defendant's allusion to the Mahomedan law could not be taken into consideration by the court, because the parties now before it are not bound by its doctrines or precepts. Possession decreed in plaintiff's favor.

From this decision Mr. D. Oman appealed again, urging the Mahomedan law of gift, &c., likewise the invalidity of such a sale after the elopement of his wife. Appellant was directed to file copy of the decision of this court in the case of Mr. D. Oman *versus* Mr. C. P. Lopes, and respondent was summoned to attend.

The respondent appeared in person and gave in a reply representing that he had paid the full consideration for the house, and that every precaution with regard to the deed of sale, registry, &c., had been taken by him. Mr. Lopes certainly carried off Mrs. Oman, but respondent had no concern in that affair nor had Mr. Oman included his name in the action with Mr. Lopes.

JUDGMENT.

This case must be decided on the principles of English law, no other applying to the parties before the court. The deed of gift or grant of the houses made by the husband to the wife must, *ipso facto*, be pronounced null and void; because to admit the validity of such a grant would be to suppose the separate existence of the wife; whereas under English law husband and wife by marriage become one person, and a husband is not capable of making a grant to his wife, for to covenant with her would be only to covenant with himself. The deed of gift being pronounced void, it follows, as a necessary consequence, that the sale, the right of making which was founded on the deed of gift, must be pronounced an invalid one; there exists therefore no necessity for entering into the question of the sale being effected after Mrs. Oman's elopement, and the consequence arising therefrom. Ordered, that the appeal be decreed, and the decision of the sudder ameen reversed by dismissing the plaint. Taking however into consideration the peculiar circumstances of the case, it is further ordered, that each party shall pay their own costs of suit.

THE 31ST MAY 1848.

Case No. 275 of 1847.

Appeal from the decision of Moulvee Mahomed Huneef, first grade Moonsiff of Bhaugulpore.

Musst. Mago, (Defendant,) Appellant,

versus

Emam Bux, (Plaintiff,) Respondent.

Syud Ushrut Allee—Vakeel of Appellant.

CLAIM, on account of value of tusser silk supplied, instituted 1st September 1847, decided 24th November 1847.

Plaintiff sued defendant for 4 rupees on account of silk supplied to her in Assin 1253, under a verbal promise that she would pay for it within a fortnight. Defendant appeared by vakcel in the lower court, but tendered no answer. The delivery of the silk and the promise given by defendant were satisfactorily proved by plaintiff's witnesses, and the moonsiff gave a decree for the amount claimed, with costs, &c.

The defendant has preferred an appeal, on the grounds that she was prevented by severe illness from entering an answer in the

lower court. She had fully repaid respondent by furnishing him with cocoons for his silk.

JUDGMENT.

On referring to the record it appears that, from the 9th September, the day on which the wakalutnamah was filed, to the 23rd November, no steps were taken by appellant to furnish her vakeel with the necessary information to enable him to draw up her answer. Nor was any mention made in the lower court of appellant's indisposition. Under these circumstances, I see no reason for interfering with the decision of the lower court, which is hereby affirmed with costs of this appeal.

THE 31ST MAY 1848.

Case No. 277 of 1847.

Appeal from the decision of Moulvee Furhut Ally, Moonsiff of Soorujgurrah.

Bhopal Roy, (Defendant,) Appellant,

versus

Oma Roy, (Plaintiff,) Respondent.

Ram Kunnye Ghose—Vakeel of Appellant.

CLAIM on bond, instituted 21st July 1847, decided 22d November 1847.

Plaintiff brought this action to enforce payment of a bond dated 26th Kartick 1247, with interest accruing thereon. Defendant had stipulated to produce for the sum borrowed, viz. rupees 7, 14 annas, Sicca, its equivalent in grain, but with the exception of 1 rupee he had made no other payment.

Defendant, in his answer, denies the transaction. The bond was not signed by him though he could write: this alone proved the document a fraudulent one.

The moonsiff was of opinion that the transaction was fully proved, and the writer of the bond had attached defendant's signature to it at his own request: a decree pronounced for rupees 15-7-4 with costs, &c.

Appellant preferred an appeal against this decision on general grounds.

JUDGMENT.

On a perusal of the record, I agree with the moonsiff in considering the transaction proved. With regard to defendant's plea that the bond was not signed by him, though able to write, it has been before ruled by this court, in the case of Dookha Mundul *versus* Bechoo Lall, case No. 315 of 1846, that such a circumstance cannot be considered as in itself sufficient to invalidate the instrument. Appeal dismissed with costs:
